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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term 1968
No. 770

TED STEVEN CHIMEL,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of California

RESPONDENT'S BRIEF.

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IN THE

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TED STEVEN CHIMEL,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S BRIEF.

Introduction

The sole matter on review before this Court in the present case is the validity of the determination by the California Supreme Court upholding the reception at petitioner's trial of evidence obtained as the result of a search and seizure conducted at petitioner's residence on September 13, 1965, by an officer who (1) had personally gathered information constituting probable cause for petitioner's arrest on a burglary charge, (2) had presented this information to the District Attorney's office which in turn had authorized the officer to seek an arrest warrant, (3) had obtained from a magistrate a warrant for petitioner's arrest, which warrant was ultimately held defective by the state courts, (4) executed the warrant at petitioner's residence, as soon as was possible, and (5) as an incident of the arrest searched the residence immediately following the ar-

rest for the fruits of the crime, thereby obtaining the evidence whose admission at trial is presently contested.

Some of the evidence seized during this search led to petitioner's arrest on a second, unrelated charge on September 16, 1965. On the latter occasion petitioner's residence was again searched, but the record does not indicate that any evidence was thereby obtained or used against petitioner at the trial.

Questions Presented

1. Was the search of the premises under petitioner's immediate control for the fruits of the crime, as an incident to petitioner's admittedly valid arrest upon probable cause, rendered unreasonable by the failure of the arresting officer to obtain a search warrant or an adequate warrant of arrest?

2. Was the search of the premises under petitioner's immediate control, as an incident to his admittedly valid arrest upon probable cause, rendered unreasonable by the fact that the scope of the search of petitioner's residence extended to areas beyond the room in which petitioner was arrested?

3. Was the search of the premises under petitioner's immediate control, as an incident to his admittedly valid arrest upon probable cause, rendered unreasonable by the fact that the warrant for petitioner's arrest was not executed until approximately six hours after it was issued because of (a) procedures customarily followed by the police department in executing warrants, (b) other burglary investigations occupying the time of the arresting officer, and (c) the desire of the arresting officer not to embarrass petitioner by arresting him at the latter's place of employment?

Statement of the Proceedings

In an information filed by the District Attorney of Orange County, petitioner was charged in Count I with the burglary of the residence of Mr. and Mrs. Vito Pulati located in the City of Santa Ana, a felony and violation of California Penal Code section 459, and in Count III with the burglary of a coin shop known as The Money Vault located in the City of Orange. (R. 1-2.) In Count II petitioner was charged with concealing and withholding the stolen property involved in the offense charged in Count I, a felony and violation of California Penal Code section 496. This latter count was ultimately dismissed. (R. 1, 374-75.)

Petitioner initially pleaded not guilty to Counts I, II, and III, then changed his plea to guilty to Count I, and subsequently again changed his plea to not guilty to Count I. (R. 4-6.)

After a jury trial in the Orange County Superior Court, petitioner was found guilty as charged in Counts I and III, the jury fixing the degree of the offenses at first degree burglary and second degree burglary respectively.[1] (R. 23-26.) Petitioner's motion for new trial was denied, as was his application for probation. Petitioner was sentenced to state prison on each of the two counts for the term prescribed by law, the sen-

[1]California law provides that burglaries of inhabited dwellings, trailer coaches, or of any building in the nighttime are of the first degree, as are burglaries involving offenders who arm themselves with a deadly weapon or commit an assault during the course of the burglary. At the time of the charged offenses, first degree burglary was punishable by imprisonment in state prison for five years to life. All other kinds of burglary are classified as of the second degree and as such were punishable by imprisonment in the county jail not exceeding one year or in state prison from one to fifteen years. Cal. Penal Code §§ 460, 461, 671.

tences to run concurrently in relation to each other and to any prior sentences. (R. 35, 37.)

Petitioner filed timely notice of appeal from the judgment of conviction (R. 35, 38), and the California Court of Appeal, Fourth Appellate District, Division Two, affirmed the judgment, *People v. Chimel,* unofficially reported in 254 A.C.A. 13 (1967) [61 Cal. Rptr. 714] (R. 390-401), and denied both parties' Petitions for Rehearing. 253 A.C.A. #4, Minutes, pp. 16, 17. The California Supreme Court granted both parties' Petitions for Hearing and on April 10, 1968, affirmed the judgment of conviction. *People v. Chimel,* 68 Cal. 2d 436 (1968) [439 P.2d 333] (R. 419-28.)

A. Evidence in Support of the September 13th Arrest and Search Involving the Burglary of The Money Vault.

The following evidence, most of which was also received at trial on the issue of petitioner's guilt of the offense charged in Count III (the burglary of the coin store known as The Money Vault), constituted the information known to Officer Thomas Del Coma of the City of Orange Police Department on September 13, 1965, when he obtained and executed a warrant for petitioner's arrest for the burglary of The Money Vault and, as an incident of the arrest, searched petitioner's residence and seized certain rare coins which appeared to him to have been stolen by petitioner in the course of the burglary in question. These coins were received in evidence at petitioner's trial over the objection of petitioner's counsel. (R. 202-03.)

On the night of August 14, 1965, Officer Del Coma responded to a burglary call at The Money Vault, which was located in the City of Orange. Officer Del Coma

had been on the force for six and a half years, almost four years of which were spent as a burglary detective. When he arrived at the coin store he observed various coins on the floor behind the counters. (R. 113-14, 201.) Entry appeared to have been through holes which had been made through two walls in the building. (R. 91, 93-94, 114-20, 245-47.) The alarm mechanism in the store included a trip wire across the front door and taping across the front windows. (R. 120-21, 171-72.)

Coins were missing from one of the showcases and from some shelves, but the contents of some showcases were undisturbed. Coins, in booklets, had been taken from the area beneath one of the showcases, the location where the most valuable items were kept. (R. 89, 91, 94-95.) Mr. B. R. Slocum, the owner of The Money Vault, definitely knew "what type of coins" had been located in this area. (R. 86, 152.)

After the burglary Mr. Slocum made an inventory of the missing coins, listing them as to value and "name and year and type and such," and made a claim to his insurance company. He was only insured in the amount of $10,000. The wholesale numismatic value of the missing coins was approximately $23,000. (R. 96-97, 132-34.) On the date of the burglary, Mr. Slocum had had between twenty thousand and thirty thousand individual coins in the shop for sale. (R. 112.) He was unable to state the exact number of coins that was missing after the burglary, but approximately one-third of his coins was taken. (R. 133, 145-46.) After the burglary, his inventory was between two and three thousand dollars. (R. 146-47.)

Mr. Slocum testified that he had known petitioner for several months prior to the date of the burglary. Petitioner visited Mr. Slocum and his wife once or twice a month. On one such occasion three or four months before the burglary, petitioner told Mr. Slocum "about some big deal he had, going to make him 50,000 or a hundred thousand dollars." Petitioner stated, " 'I have a group of guys coming out from the East to knock over a $50,000 collection in Fullerton. . . . We are hitting a doctor over in Fullerton for around 50 to 60,000.' " Mr. and Mrs. Slocum thought that petitioner was joking. (R. 97-99, 103.)

Petitioner inquired as to the amount for which Mr. Slocum had insured his coins. Mr. Slocum replied that he had had $50,000 worth of insurance but had just reduced the amount to $10,000; he was planning to save the cost of insurance premiums by placing much of his coin stock in a bank and thought that he would thereby avoid being robbed or burglarized. (R. 103.)

Petitioner then asked Mr. Slocum, " 'How would you like to have your place knocked off?' " (R. 103.)

Mr. Slocum replied, " 'Well, this is ridiculous, because I wouldn't reduce it from 50,000 to 10,000 if I wanted to have my place knocked off.' " When asked by petitioner what kind of alarm system there was in the store, Mr. Slocum told him that it was an Orco system. Mr. Slocum thought that "the whole thing was kind of a jester." (R. 103.)

On one occasion petitioner visited Mr. Slocum at the store and inquired about 20¢ pieces. Mr. Slocum showed him some of these coins and some other high-priced coins. Mr. Slocum had to get these coins from under-

neath one of the showcases, where he kept his "real good stuff" concealed beneath some empty coin albums so that it would not be taken in the event of a burglary. Mr. Slocum had intended to place these coins in a bank when he had the time. (R. 104, 182-83.)

Other than petitioner, Mr. and Mrs. Slocum, and the sister-in-law of Mr. Slocum, there was only one person, another customer, who had known the location where these valuable coins were kept. (R. 104.)

On the day preceding the burglary, Mr. Slocum was ill and his sister-in-law was tending the store. In her words, petitioner came into the store and "was just sitting there, looking around. . . . He didn't come in to buy coins or anything. He just was in there," remaining "quite a while." When she locked up the store that evening, she attached the alarm mechanism. (R. 87-88, 169-72.)

A few days after the burglary, Mr. Slocum received a telephone call at his home from petitioner. (R. 105.)

The conversation went as follows:

> Petitioner said, " 'I heard you got robbed.' "
>
> Mr. Slocum replied, " 'Yes, I did.' "
>
> Petitioner continued, " 'Well, I see you knocked your place over.' "
>
> Mr. Slocum inquired, " 'What are you talking about?' "
>
> Petitioner repeated his previous remark and said, " 'I see you knocked your own place over to collect the insurance money.' "
>
> Mr. Slocum stated that whoever had broken in had done "a very sloppy job."

Petitioner said in a stammering and excited voice that, " 'No,' " he had heard it was "real professional."

Mr. Slocum disagreed and, repeating that it was a "very bad job," asked petitioner, " 'Ted, did you do the job?' "

Petitioner replied, " 'Why, no. I didn't do it.' " (R. 105-06.)

On the night of The Money Vault burglary Thomas Ambrose, a neighbor of petitioner, had asked petitioner to accompany him on a bicycle ride, but petitioner had declined, stating that he had a "big deal cooking." When Mr. Ambrose inquired further, petitioner explained that he and another unnamed party "were going to knock over a place." Petitioner indicated that the deal involved a coin shop, that the shop was "all set," and that $60,000 might be involved. (R. 186-87.)

Mr. Ambrose attempted to dissuade petitioner from carrying out the plan, but petitioner showed Mr. Ambrose a Walkie-Talkie in his automobile and said, " 'We were going to use these to keep a lookout.' " Petitioner, speaking into the Walkie-Talkie, said: " 'Hello, Chuck. Come in, Chuck.' " Apparently there was no response, and petitioner continued: " 'Well, I guess Chuck isn't listening or he's not home at this time.' " (R. 187-88.)

On the following day, August 15, 1965, petitioner told Mr. Ambrose that he and the other party had entered the shop, that they had broken through two walls, and that they had come in contact with alarm wires. Petitioner stated that in fact they had not entered the shop but had backed out because they feared detection. Subsequently that same day petitioner related that they

had not really done this, that he had given Mr. Ambrose a "phony story." (R. 188-89.)

Mr. Ambrose related petitioner's remarks to his wife, and apparently on August 16, 1965, she showed him a newspaper article describing a coin shop burglary that had taken place in the City of Orange. That evening or the following day, Mr. Ambrose contacted the police and informed Officer Del Coma of petitioner's statements. (R. 189-90, 229-30.)

One or two weeks previously, Mr. Ambrose had visited petitioner's house and noticed that between eleven and fifteen electric typewriters were stored in a bedroom. Petitioner asked Mr. Ambrose whether the office where Ambrose worked as a title officer, the Security Title Insurance Company, used this brand of typewriter and whether the office was "in the market for any." Mr. Ambrose replied that his office used such machines but was not in need of any. (R. 190.)

When Mr. Ambrose asked where petitioner had obtained the machines, petitioner "just smiled" and asked whether Mr. Ambrose would like to purchase one. Mr. Ambrose replied, "'I don't know. Are they hot?'" (R. 190.)

Petitioner's reply was, "'Hotter than a $3 bill.'" (R. 190.)

At the trial Mr. Ambrose described petitioner as "one of the most expert individuals in working with precision tools that I have seen." Petitioner owned precision tools which he used to age coins and "redo" them to make them look new. These implements apparently were also used by petitioner in his profession as a dental technician. (R. 191, 239.)

On August 25, 1965, at Officer Del Coma's request, a Santa Ana police unit directed petitioner's vehicle to the side of a street in the City of Santa Ana. (R. 256, 265-66.) Officer Del Coma did not draw his gun, nor did he recall seeing any other officer with a drawn gun. (R. 256.) Petitioner was not arrested or taken into custody. (R. 256, 265.) He was asked to accompany the officer to the police station "and discuss a matter in which he had been alleged to be involved." (R. 256.) As Officer Del Coma testified at the trial, "After it was explained to Mr. Chimel what the situation was he voluntarily accompanied me to the Orange Police Department." (R. 265.) At the station Officer Del Coma discussed with petitioner the burglary of The Money Vault. Petitioner asked Officer Del Coma whether the police had considered the possibility that Mr. Slocum "had created this situation for insurance reasons." The conversation then centered on the possibility of the coins being returned, but "it was not definitely labeled as to who was going to return the coins." The conversation terminated, after a maximum of forty-five minutes or an hour, with the possibility of the coins being returned. Petitioner then left the station. (R. 258, 265, 370.) *At the trial it was petitioner's counsel who initially and deliberately elicited the testimony related to this incident.* (R. 256-57.)

Five days later, on August 30, 1965, a meeting took place at the City of Orange police station between petitioner, one Charles Hamburger, an attorney named Everett Jones, Officer Del Coma, and an Officer Ferguson. (R. 258-59, 342.)

Mr. Jones indicated that he was representing the two suspects in the burglary of The Money Vault, that

Officer Del Coma knew who they were, and that Jones' purpose was to attempt to negotiate the return of the coins so that there would be no civil claim by Mr. Slocum against Jones' clients. Mr. Jones said that he felt the missing coins could be returned. (R. 259-61.) Jones, Hamburger, and petitioner participated in the negotiations and "discussed the possibility of returning the coins from the burglary for a civil release," but Jones was "pretty much in control of the conversation." On several occasions Jones told petitioner to keep quiet. (R. 260-61, 264, 271.) Jones appeared to be representing both suspects. (R. 270.)

During the negotiations a problem arose as to the exact identification of the coins. Jones and his clients wanted a listing of all the missing items. Petitioner stated that he had seen the coin circuit teletype, that "there were things on there which were not taken," and that Mr. Slocum was possibly claiming a larger loss than he had suffered. A request was also made that Mr. Slocum be in a position to identify every missing coin. Mr. Slocum, who was present during a portion of the conversation, indicated that he could identify the majority of his loss but would have trouble identifying some of his recent acquisitions. (R. 264-65, 266-67.)

The conference ended after two hours, "still up in the air."[2] (R. 265.)

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[2]Petitioner's counsel made no objection to the admission in evidence of petitioner's statements to Officer Del Coma on this occasion and on the occasion of petitioner's earlier visit to the police station. It was stipulated by counsel that none of the statements came within the rules set forth in *Miranda v. Arizona*, 384 U.S. 436 (1966), and *People v. Dorado*, 62 Cal. 2d 338

(This footnote is continued on the next page)

Approximately one week after this conference, Mr. Slocum telephoned petitioner regarding the latter's failure to return the stolen coins. Mr. Slocum had been in touch with the police department. He told petitioner, " 'You had promised at the police department to bring the coins back, and why weren't they back?' " Mr. Slocum was very anxious to have his coins back since one-half to three-fourths of his inventory had been taken. (R. 106-07.)

Petitioner evaded Mr. Slocum's questions and acted as if he did not know what Mr. Slocum was talking about. Petitioner then said, " 'Did you ever think someone was trying to help you instead of hurt you by not cleaning you out completely?' " (R. 107.)

Mr. Slocum replied that he did not know how a much better job could have been done as far as "cleaning . . . [him] out." (R. 107.)

Sometime thereafter, but prior to September 13, 1965, the date of petitioner's initial arrest, Officer Del Coma had several contacts with Hamburger and received information from him regarding what petitioner had proposed to do with his own portion of the coins. During this period Officer Del Coma also received an unspecified number of Mr. Slocum's missing coins from the Torrance Police Department, which had seized them in attorney Jones' office. Hamburger was never arrested. (R. 268-69, 271.)

Around the first week of September, Officer Del Coma was informed of the following incident by Mr.

(1965) [398 P.2d 361], *cert. denied*, 381 U.S. 937 (1965), and that the court need not instruct the jury on this matter "in view of the fact that the Defendant was not in custody and was not subject to interrogation." (R. 386.)

Jack Parsons, the owner of the Lido Coin Shop in Costa Mesa, who had known petitioner for over a year. Petitioner had visited Mr. Parsons at the shop and related to him that petitioner and another party were involved in the recent burglary of The Money Vault, and that petitioner wanted Mr. Parsons to sell some coins for petitioner's wife if something happened to petitioner in connection with the present offense. Petitioner said that these coins were not part of the burglary, and Mr. Parsons agreed to sell them on this condition. (R. 194-96, 230.)

Mr. Parsons told petitioner that he should return the coins stolen from The Money Vault and that "with a break, nothing would happen." Petitioner replied that he had given the coins to someone else. Petitioner also said that there were some typewriters "involved with the same thing," but Mr. Parsons had not comprehended this statement. (R. 196-97.)

At the trial, Orange County Deputy District Attorney Robert E. Law was called as a witness by the defense, outside the presence of the jury, with regard to the procedures by which a warrant for petitioner's arrest was obtained on September 13th. Between August 15th and August 30th Officer Del Coma had submitted several reports regarding the burglary of The Money Vault to Mr. Law, whose function was "basically to determine from the facts stated in the reports and the investigation of the police whether or not a Complaint should be issued by the District Attorney's office, charging the Defendant with a crime." (R. 378-79.)

(In California the same complaint may serve the dual function of being (1) the basis upon which a magistrate, if satisfied therefrom that the offense complained

of has been committed, issues a warrant of arrest [California Penal Code section 813]; (2) the initial accusatory pleading in a felony prosecution [California Penal Code sections 806, 952].)

Among the reports submitted to Mr. Law by Officer Del Coma were a two-page report dated August 15th, a seven-page report dated August 17th, a four-page report dated August 19th, a four-page report dated August 24th, and a thirteen-page report dated August 30th. (R. 378-79.)

Mr. Law had several conversations with Officer Del Coma during the course of the officer's investigation of The Money Vault burglary. (R. 379-80.) On August 30th Mr. Law declined to have a complaint issue against petitioner. Mr. Law "was not satisfied"; he felt that there might be "enough" evidence against petitioner but wanted an officer to contact Mr. Parsons to whom petitioner was reported to have admitted committing the burglary of The Money Vault. (R. 380-81, 382.) At that date no law enforcement officer had spoken to Mr. Parsons about petitioner's statement. (R. 381.) Once he had definite information concerning petitioner's statement to Mr. Parsons, Mr. Law (on or about September 13th) authorized the filing of a complaint. (R. 382.) When he authorized the filing of the complaint, Mr. Law had also been informed of petitioner's statements to Mr. Ambrose but did *not* have information connecting petitioner to the burglary of the Pulati residence. (R. 380-82.)

Mr. Slocum made between ten and fifteen visits to the Orange Police Department in connection with the burglary of The Money Vault and had to make a couple

of changes in the list of missing coins prepared for the insurance company because of the coins returned to Mr. Slocum through the Torrance Police Department. (R. 153.)

On September 13, 1965, Officer Del Coma filed a complaint[3] upon which, at 10:39 on the morning of that day, a Municipal Court Judge of the Santa Ana-Orange Judicial District issued a warrant[4] for petitioner's arrest. The warrant commanded that petitioner be arrested "forthwith" and brought before that court. (Appendix A to Respondent's Brief.) Officer Del Coma interpreted the word "forthwith" as "right then . . . [w]hen practical." (R. 236-37.)

As petitioner's counsel elicited on cross-examination of Officer Del Coma at the trial, the officer did not obtain an arrest warrant because he thought he "needed" it. The officer testified, "Whenever possible I attempt to secure a Warrant prior to making an arrest; if the matter of investigation proceeds along the lines that I didn't have time to get one, I will proceed on reasonable cause." (R. 229.)

After securing the warrant Officer Del Coma returned to his department and followed customary procedure by checking the warrant into the warrant detail. An entry was made on a master card, and a warrant packet was made out by the records section. This policy was followed, except where there was a danger of immediate flight, because of "problems arising out

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[3]The complaint is set out verbatim in Appendix A to Respondent's Brief.

[4]The warrant was in the form prescribed by California Penal Code sections 814, 815, and 815a and is set out verbatim in Appendix A to Respondent's Brief.

of arrests on suspicion when there is a Warrant being secured." (R. 237-38.) The records section finished processing the warrant at approximately 2 p.m. that day. (R. 238.)

That day Officer Del Coma was "actively engaged" in several other burglary investigations, both prior to and subsequent to 2p.m. (R. 238.) (Officer Del Coma's monthly caseload of burglaries committed in the City of Orange ranged from a minimum of forty-five to a maximum of eighty. [R. 241.] Additionally, Officer Del Coma worked closely with the burglary detail of other police departments in Orange County on burglaries committed in other jurisdictions. [R. 241-42.])

At approximately 4 p.m. that day, September 13, 1965, Officer Del Coma arrived at petitioner's residence to execute the warrant of arrest. (R. 237.) Petitioner's house was a three-bedroom single structure located on an average tract-size property in the City of Santa Ana. (R. 243.) Officer Del Coma (who was from the City of Orange Police Department) was accompanied by two officers from the City of Santa Ana Police Department, Bob Moreno and Fred Gallmeister. (R. 114, 201, 230-31.) It was a general practice for any officer entering the city limits of another city to contact and work with the local police departent. (R. 201.)

When the officers arrived at the house, they knocked on the door. Petitioner's wife came to the door, and the officers identified themselves and asked whether they could step in and speak to her. Petitioner's wife "ushered" the officers into the residence and asked them to sit down. (R. 202.) Petitioner was not there, a circumstance known to the officers, who knew

the location of his place of employment but "had gone to the residence to keep from approaching him at his place of business to cause him any problem there." (R. 202, 223, 235-36, 237.)

As Officer Del Coma testified at the trial, "there was no particular direct delay on my part." Officer Del Coma specifically *denied* delaying the execution of the warrant of arrest until the time of petitioner's return home "so that the arrest could be made at his home and used as a pretense to search his home." (R. 237.)

Ten to fifteen minutes after the officers' arrival petitioner came home from work and entered the front room, where the officers were seated. (R. 231, 243.) Petitioner recognized Officer Del Coma from their previous conversations. Officer Del Coma stood up, informed him that the officers had a felony warrant for his arrest, and handed him the warrant for him to read and examine. At this time petitioner was "advised of his rights." (R. 202, 231.)

Officer Del Coma inquired whether petitioner "had any objections to . . . [Del Coma's] looking around the house. He said he'd rather that . . . [Del Coma] didn't." (R. 202.)

Officer Del Coma "advised him on the basis of the lawful arrest on a Felony Warrant, which he had just viewed, that I would like his wife to accompany me through the residence for a cursory search for any possible evidence from our burglary." (R. 202.)

The search that ensued at the premises took approximately forty-five minutes. Officer Del Coma "was trying to proceed as quickly as possible" so as not to linger with petitioner at the house. (R. 243-44.)

At the trial the testimony relating to the conduct of the search came entirely from Officer Del Coma, who described the search as follows:

"The basic, direct search was made in the master bedroom and the room commonly referred to as the sewing room." (R. 231.)

". . . [W]e went into what I would deem the adult bedroom or the master bedroom. We asked Mrs. Chimel to open drawers, asked her to physically move contents of the drawers from side to side so that we might view any items that would have come from our burglary. She did this without hesitation." (R. 204.)

". . . . In the master bedroom and the . . . sewing room, which in turn is a bedroom we did—she did physically uncover certain items in drawers, and as we would spot them, we would examine them.

"We picked up items that we felt were similar, or in fact the ones taken from our job. We left many items at the residence which we could not identify on the basis of a police report." (R. 204.)

"The specific medals or tokens or specific individual coins as to a particular exact location would be very hard at this time to relate. We found an assortment of all items in the master bedroom area and again in the bedroom that was referred to as the sewing room." (R. 204.)

". . . . There was a brief observation into the child's room, a visual search in the front room, a visual search in the kitchen into several cupboards in that area, a visual, cursory search in the garage, which is attached to the residence . . . ." (R. 231-32.)

Nothing in the child's room was seized. (R. 239.)

While in the garage Officer Del Coma observed a small dental workshop (petitioner was a dental technician) and certain marked plastic coin tubes which were not listed as missing or stolen. (R. 239.)

There was also a "visual, cursory search by opening up an opening into the attic." (R. 232.)

Officer Del Coma "had Mrs. Chimel with . . . [the officers] for the prime purpose of opening drawers in the bedroom, and had her arrange or slide the contents of these drawers. There was no ransack in any place throughout the premises." (R. 232.) It was petitioner's wife rather than the officers who opened the various drawers. (R. 238-39.)

The seized coins and medals, most of which were inside plastic tubes and cardboard boxes, were placed into two canvas satchels provided by petitioner's wife. (R. 204-05, 223-24, 227-28.) Apparently all the coins and medals seized were found in the master bedroom and the bedroom described as the sewing room. (R. 204, 223.) There were cardboard boxes and a small metal box in a closet in the sewing room, and the officers questioned petitioner's wife as to the contents. (R. 239.) The officers seized a quantity of Wilkinson Sword razor blades because, according to what petitioner told Officer Del Coma on this occasion, the razor blades were part of a "transaction in payment for a coin deal." Other than these razor blades, only coins and coin paraphernalia were seized.[5] (R. 228.)

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[5]The inventory of the seized items from the Superior Court file is set forth in Appendix B to Respondent's Brief.

On completion of the forty-five minute search at the residence, Officer Del Coma and the two Santa Ana officers left the premises. Officer Del Coma dropped off the other officers at their police station and brought petitioner to the Orange Police Department. Officer Del Coma and petitioner sat at Del Coma's desk in the Detective Bureau and went through the coins. An inventory of the property was made in petitioner's presence, and Officer Del Coma gave petitioner a signed copy. In turn petitioner approved the inventory and signed a copy. (R. 205, 224, 243.) The coins were that day checked into evidence at the Orange Police Department. (R. 224.)

Petitioner was released on bail sometime shortly thereafter. (R. 240.)

The record does not indicate expressly whether or not Mr. Slocum was able to identify any of the coins seized during the search as among those taken from The Money Vault. In this context it should be noted, however, that as a dealer his stock was continuously changing and that, with one exception, there is nothing in the record to suggest that even the rarer coins taken from The Money Vault were readily identifiable in the sense of being distinguishable from other rare specimens of the same denomination.[6] (R. 175-77; *compare* R. 272-74, 276-87, 296.)

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[6]Two months *after* the search, a readily identifiable coin from The Money Vault burglary was located at an establishment known as Type Coinage Unlimited. The owner of the coin store, Mr. Melvin Shapiro, had purchased this particular coin and several others from petitioner at the Professional Numismatist's Guild approximately two months after the burglary of The Money Vault. On January 25, 1966, Mr. Slocum, in the company of Mr. Don Burton, a representative of the District Attorney's office, identified the coin in question, an 1877-S trade

Significantly, however, Mr. Slocum specialized in Washington quarters, quarters were taken, and there were 145 Washington quarters among the coins recovered at petitioner's residence. A quantity of silver dollars was among the coins taken from The Money Vault, and the coins recovered at petitioner's residence included 28 silver dollars. (R. 89, 177; App. B. to Resp. Br.)

The trial court upheld the September 13th search as not only incident to an arrest upon a valid warrant but also as incident to an arrest upon probable cause, finding specifically that the information in the possession of Officer Del Coma constituted probable cause for petitioner's arrest. (R. 219-21, 22.)

The California Supreme Court found the arrest warrant to be defective but upheld the arrest as a valid arrest upon probable cause, holding that the search and

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dollar, from four "faulty" unusual markings on the back of the coin, as one of the coins that had been taken during the burglary of The Money Vault. (R. 97, 108-11, 160-62, 306-07.) This coin was the only trade dollar that Mr. Shapiro had possessed in the preceding two years. (R. 307.)

Thereafter, six to eight weeks prior to the trial in the present case, petitioner saw Mr. Shapiro and mentioned that he (petitioner) was going to trial. Mr. Shapiro stated that Mr. Slocum and Mr. Burton had taken the trade dollar, and said, "'Remember the trade dollar and the half cents?'" Petitioner replied, "'I remember the half cents; I don't recall the trade dollar.'" When Mr. Shapiro said that he would have to testify that he had obtained the trade dollar from petitioner, petitioner replied that if he (petitioner) denied it, it would be his word against Mr. Shapiro's. (R. 313-14.)

After one of the court sessions in the present case, petitioner told Mr. Ambrose, who was a witness as to certain of petitioner's extrajudicial admissions set forth above, that Mr. Ambrose was "the only one that could shoot him down on this thing." (R. 193.)

The evidence summarized in this note was received without limitation. It was relevant on the issue of petitioner's guilt but of course has no direct bearing on the legality of the search and seizure.

seizure which followed was reasonable as incident to the lawful arrest. *People v. Chimel,* 68 Cal. 2d 436, 440-42, 444 (1968) [439 P. 2d 333, 335-37, 338] (R. 421-24, 427.)

B. Evidence in Support of the September 16th Arrest and Search Involving the Burglary of the Pulati Residence

The following evidence, which was also received at trial on the issue of petitioner's guilt of the offenses charged in Count I (the burglary of the Pulati residence) and Count II (the concealment and withholding of the property stolen in the Pulati burglary), constituted the information known to Officer Fred Gallmeister of the City of Santa Ana Police Department on September 16, 1965, when he obtained and executed a warrant for petitioner's arrest for the burglary of the Pulati residence and, as an incident of the arrest, searched petitioner's residence. *The record does not indicate that anything was seized during this search, nor that any information possibly obtained thereby led to the admission of any evidence at petitioner's trial. Significantly, all the evidence relative to the occurrence of the second search was deliberately elicited by petitioner's counsel and none of it by the prosecuting attorney.* (R. 229, 233-34, 240-41, 243.)

Officer Del Coma, assigned to the Orange Police Department burglary detail, worked closely with the burglary detail of the Santa Ana Police Department. (R. 241-42.) Petitioner was also a suspect in the burglary of the residence of Mr. and Mrs. Vito Pulati, located in the City of Santa Ana. The Pulati burglary, like the burglary of The Money Vault in the City of Orange, involved the theft of rare and valuable coins. (R. 242.)

On September 15, 1965, two days after petitioner's arrest for the burglary of The Money Vault, Officers Gallmeister and Moreno of the Santa Ana Police Department came to the Orange Police Department in the company of Mr. and Mrs. Pulati. (R. 205.)

In the presence of Officer Del Coma, the two Santa Ana officers, and Mr. Joe Steele, a "recognized coin man," the Pulatis examined coins, medals, and tokens which Officer Del Coma had gathered from petitioner's residence during the search that followed petitioner's arrest for the burglary of The Money Vault. (R. 205, 226, 228, 240, 271-72.)

Mrs. Pulati testified at the trial as to how she and her husband were able to identify some of the items taken in the burglary of the Pulati residence from the quantity of coins, medals, and coin paraphernalia recovered during the search incident to petitioner's arrest for The Money Vault burglary:

> "Well, there were a great many items that were identical to items that we had lost in our burglary. We were looking specifically for something that was familiar, like packaging or a box or something that we could recognize, because coins, a lot of our coins when they were lost were just laying loose in a drawer. They weren't in a box or a holder or anything, and even though they were coins in these satchels with the same dates and the same type of a coin, they were now in some sort of a holder instead of just laying loose." (R. 272.)
>
> "Well, we lost so many different things: we lost hundreds of rolls of nickels, and there were a lot of rolls of nickels there, but I didn't pick up every one

of these rolls of nickels that Del Coma had at the police station that morning and check it out. There was no reason for that, because a roll of nickels is is just a roll of nickels unless it had my name on it or something." (R. 286-87.)

Among the items seized during the September 13th search and identified by the Pulatis [Superior Court Exhibit 11-A, R. 226] on September 15th as having been taken from their home were: (1) a somewhat unusual box which Mrs. Pulati had purchased in Sacramento (R. 272-74); (2) certain coins, medals, and tokens inside the box which had been inside it at the time of the burglary (R. 274-75, 288); (3) an Alaskan Native Brotherhood medal, two privately-issued tokens of very limited circulation issued by a Sherbrooke, Quebec coin dealer, two Civil War tokens, and a "No Tip" token (R. 276-78, 293); (4) medals issued by the Wyoming and Northern California Numismatic Associations; Guatamalan, Panamanian, Colombian, and French crowns; a roll of 1929-S Lincoln pennies on which there was a very unusual label bearing Mr. Pulati's handwriting (only partially scratched out), and some coin holders or wallets. (R. 279-83, 294-96; *see* App. B. to Resp. Br.)

With reference to one particular coin wallet which she identified, Mrs. Pulati had never seen anyone else use one of that type, with the exception of petitioner, who was using such a wallet two or three months after the burglary of the Pulatis' house but whom Mrs. Pulati had never seen using one prior to the burglary. The company that made the wallet had gone out of business. (R. 284.)

After the foregoing testimony was received at the trial relating the Pulatis' September 15th identification of these items, it was stipulated by petitioner's counsel and the deputy district attorney that the aforementioned coins and tokens identified by the Pulatis had been at the Pulatis' home on the night it was burglarized. (R. 298.)

Officers Gallmeister and Moreno were present when the aforementioned items were identified, and they considered petitioner a suspect in the Pulati burglary. As the sole two residential-burglary investigators of the Santa Ana Police Department at that time, they were aware of the following facts underlying the February 2, 1965, burglary of the Pulatis' Santa Ana home. (R. 41, 43-44, 48-49, 205, 235.)

Immediately upon learning that their home had been burglarized, the Pulatis had summoned the Santa Ana police. (R. 45, 48-49.)

The night of the burglary marked the one night that petitioner had missed a monthly meeting of any of the three coin clubs in which he and the Pulatis were concurrent members during the preceding period of approximately half a year. (R. 41-42, 44, 47-48, 60, 63.)

During the three months preceding the burglary of their home, the Pulatis had been visited at their home by petitioner on a regular basis. Petitioner lived nearby and would often drop by to discuss coins and buy and sell a few coins. During this period the Pulatis were engaged in re-inventorying and repackaging their collection of coins, and petitioner was often present while the Pulatis were so occupied. When on occasion petitioner expressed an interest in purchasing certain

coins, the Pulatis brought them out for him to examine. (R. 42-43.)

The Pulatis had a very diversified collection that included paper money, domestic and foreign coins, medals, and tokens. They had invested thousands of dollars in their collection and hoped one day to open a coin shop. (R. 43.) Their collection was worth approximately $25,000. (R. 57.)

The first time petitioner observed Mrs. Pulati working on a book of coins, he said, "'You have all these coins around the house. You must have insurance.'" She replied that she and her husband did have insurance. (R. 43.)

On the night of the burglary the Pulatis left at 6:50 p.m. to attend a meeting of one of the three coin clubs and returned at 10:30 p.m. (R. 43-44.) Upon their return they noticed that the porch lights were off and could not be turned on, and the lock had been cut out of the back door. (R. 44-45.)

After contacting the police the Pulatis checked their possessions. Certain medals and silver dollars were still on the coffee table where they had been left, and coins which had been in the dining room were still there. The sterling silver had not been moved from the dining room, and Mrs. Pulati's diamond watch was still lying on the dresser in the bedroom. There was no indication of the house having been ransacked. (R. 45-46, 70-71.)

The main portion of the Pulatis' coin collection was contained in a locked standard GI locker and had not been taken. Two large drawers containing a strong box and coins were missing, as well as a small cabinet

(full of coins) and a number of boxes of coins and supplies. These items had been located in the den, the room from which Mr. Pulati in the past had fetched coins to show to petitioner. (R. 46, 51, 56, 62-63, 69.) The missing supplies included coin wallets, coin holders, and books. (R. 70.) At the trial Mr. Pulati gave a detailed description of the missing coins. (R. 74.)

The two Santa Ana officers arrived several minutes after the Pulatis returned to their home. The Pulatis compiled a list generally describing the missing coins and gave it to the officers. Included on the list were silver dollars, as well as boxes and rolls of pennies, nickels, and dimes. The Pulatis had been in the process of making a new inventory of their coins and had almost completed this project. Their inventory books comprised several hundred pages detailing each individual coin. (R. 48-50, 75-76, 77.) Mrs. Pulati was specifically aware of the contents of the missing drawers, although she did not remember every coin. (R. 50-51.) Approximately two weeks after the burglary the Pulatis completed a detailed list of the missing coins for submission to their insurance company. (R. 61-62, 78-79.)

The cash or face value of the missing coins was between $500 and $800, and the retail numismatic value apparently was at least $2,541.62, the Pulatis having been compensated in this amount for their loss by the Liberty Mutual Insurance Company. (R. 53-54, 57-58, 59-60.)

The Santa Ana police questioned the Pulatis "about who we knew that could have possibly done this." (R. 49.) In addition to petitioner's unprecedented absence from a meeting of one of the three coin clubs on the

evening of the burglary, the fact that petitioner was one of only two persons in Santa Ana who knew that the Pulatis kept coins in their home led the Pulatis to believe that petitioner had committed the burglary. The other person who knew was the man who had sold the Pulatis their house; they were new in the area and did not yet know many people. (R. 60.) Petitioner was the only member of any of the three coin clubs of which the Pulatis were members who had been to their home. (R. 61.)

On the basis of what was disclosed by his investigation of the Pulati burglary, including the Pulatis' identification of some of the missing items retrieved during the September 13th search, Officer Gallmeister filed a complaint[7] (R. 233-34) on September 16, 1965, upon which at 10:30 a.m. that day, a Municipal Court Judge of the Santa Ana-Orange Judicial District issued a warrant[8] for petitioner's arrest. (R. 240; App. A to Resp. Br.)

Sometime on the afternoon of September 16th, Officers Moreno and Gallmeister arrived at petitioner's residence to execute the second warrant of arrest. (R. 240.) Officer Del Coma accompanied the two Santa Ana officers since the Orange and Santa Ana Police Departments were coordinating their investigations of the two burglaries, petitioner being a suspect in both instances. The two Santa Ana officers conducted a search incident to arresting petitioner, but Officer Del

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[7]The complaint is set out verbatim in Appendix A to Respondent's Brief.

[8]The warrant was in the form prescribed by California Penal Code sections 814, 815, and 815a and is set out verbatim in Appendix A to Respondent's Brief.

Coma did not observe the search. Officer Del Coma either remained on the front porch steps or stepped inside the front door. (R. 229, 233-34, 235, 240-41.) The search was not as "thorough" as the September 13th search. (R. 233.)

C. The Defense

Morris Diehl, a coin dealer, testified that certain coins, medals, and tokens, identified as among those taken from the Pulatis' home and recovered at petitioner's residence, were purchased by petitioner from an unknown man at Coinarama (a place of general exchange for coin dealers) in February or March of 1965. (R. 299-300.)

On cross-examination, Diehl testified that he was 18 years of age at the time of this incident. Diehl claimed to recognize the coins involved from certain dents and gouges. (R. 301.) Petitioner had told Diehl to testify that petitioner had purchased the medals and tokens. (R. 303.)

Petitioner testified in his own behalf, giving his occupation as dental technician and coin dealer. (R. 334.) He repeated essentially the same story related by Diehl. (R. 340-41.) Petitioner denied knowing that the coins in question had been stolen from the Pulatis. (R. 342.) He did not collect medals but had purchased the medals at Coinarama as part of a package deal. (R. 364-65.) Petitioner did not remember whether the red coin wallet was part of the transaction but later changed his testimony and stated that he recalled purchasing the coin wallet at a coin shop. (R. 367, 388.) Petitioner denied having burglarized The Money Vault and the Pulatis' home, or having had anything to do with the two burglaries. (R. 354.)

Petitioner claimed to have spent the evening of August 14, 1965 (the night of The Money Vault burglary) driving around town with Hamburger trying to observe the Watts riots and later playing poker with Hamburger. Between the hours of 12:10 a.m. and 8 a.m. on August 15, 1965, petitioner was at home. (R. 336-40, 362-63.)

At an earlier date petitioner had had a conversation with Mr. Slocum in which Slocum purportedly had told him, " 'I'd like to have my place wiped out. Just that; that's the only way I can collect on my insurance, but I need more insurance money.' " (R. 351.) Mr. Slocum related that there was a skylight above The Money Vault and said, " 'You can get in through that way.' " (R. 352.)

Petitioner purportedly received a telephone call from an unidentified man on August 14, 1965; the man, referring to The Money Vault, related " 'You know, I think I am going to knock that place off.' " (R. 335.)

On the morning of August 15, 1965, the same unidentified man purportedly telephoned petitioner and said, " 'Say, I couldn't get in that place.' " The man related that he had gotten through one or two walls, had run into some wires, and had been unable to get in. (R. 357-58.)

Shortly after petitioner's first conversation with the unidentified man, Mr. Ambrose had dropped by and asked petitioner to go bicycle riding with him. Petitioner declined, stating that he had "a big deal" and that he was "going to knock off a coin shop." Petitioner joked around and attempted to contact Chuck Hamburger on the Walkie-Talkie. (R. 336.)

On cross-examination, petitioner admitted having told Mr. Ambrose that he had gone through two walls to reach the interior of The Money Vault but that he had found some black wires and "did not commit the burglary." Petitioner had later told Mr. Ambrose that the whole story was a joke. (R. 357.)

Petitioner admitted having subsequently told Mr. Parsons that he (petitioner) had "pulled" The Money Vault "job." Petitioner told Mr. Parsons, " 'Who knows, I may even probably go to jail on this thing.' " (R. 360, 372.) Petitioner testified that he "could have very easily" told Mr. Parsons that the reason petitioner had not returned the coins to Mr. Slocum was that "the coins in some way had something to do with typewriters." (R. 361.)

Attorney Everett Jones testified that during August of 1965 he was representing Charles Hamburger but that he had never represented petitioner. (R. 343.)

On cross-examination, Jones testified that he had appeared at the City of Orange Police Department at the same time as petitioner and Hamburger, but that he was not representing petitioner on that occasion. Jones purportedly made it "entirely plain" that he represented only Hamburger, and Jones so informed Officer Del Coma. Jones had not told Del Coma that he was representing "the suspects" in the burglary of The Money Vault. (R. 343-44.)

Jones denied that a police officer had entered Jones' office and, viewing certain coins on Jones' desk, said: " 'Hey, that's part of the loot of the B.R. [Slocum] burglary.' " Jones denied having said, " 'Take the coins; I want no part of them.' " (R. 344.)

Summary of Argument

The validity of the search of petitioner's residence depends upon the applicability of the rule permitting searches incident to arrest inasmuch as the officer who conducted the search did not procure a search warrant, did not obtain a valid consent to search the premises, and was not presented with an emergency situation.

Petitioner concedes (Pet. Op. Br. p. 28), as he must in the face of the record, that the arrest was lawful since the officer had probable cause to believe that petitioner had committed the burglary of the coin shop known as The Money Vault. Despite the California Supreme Court's conclusion that the warrant for petitioner's arrest in possession of the arresting officer was defective because issued upon insufficient factual averments, the court correctly upheld the arrest on the theory of probable cause apart from the warrant, since at the trial the prosecution had justified the arrest on that theory as well as on the warrant and the trial court had found the arrest lawful on both grounds. *Giordenello v. United States,* 357 U.S. 480, 486 (1958) (relied on in the present case by the trial court, the Court of Appeal, and the California Supreme Court).

The right under certain circumstances to conduct a reasonable search incident to arrest is well founded in the common law and this Court's decisions and is an essential technique in day-to-day law enforcement. The present search was clearly reasonable under current standards, the continued validity of which is apparent in light of the necessity of balancing the traditional right of citizens to be free from unreasonable invasions of privacy with the need of citizens for effective protection from increasing crime.

The objective of the search was as legitimate as any imaginable—to return thousands of dollars of coins to their owner, who had had up to three-fourths of his inventory stolen by petitioner. *See Warden v. Hayden,* 387 U.S. 294, 311 (1967) (concurring opinion of Mr. Justice Fortas). The arresting officer knew that petitioner was a coin collector and that he had bragged to several acquaintances about having committed the burglary, and all indications pointed to the coins being secreted at petitioner's residence. Furthermore, the likelihood that the coins were at petitioner's residence at the time of his arrest also gave the arresting officer probable cause to believe that petitioner was committing in his presence the felony of concealing and withholding stolen property. Cal. Penal Code § 496.

The search immediately followed petitioner's arrest in the front room of his residence and was confined to areas where the arresting officer reasonably expected to find the fruits of the particular burglary for which petitioner had just been arrested. The permissible scope of a search without a search warrant must be judged by its objectives, *Warden v. Hayden,* 387 U.S. 294, 310-11 (1967) (concurring opinion of Mr. Justice Fortas), cited in *Terry v. Ohio,* 392 U.S. 1, 19, 26, 29 (1968), and since the bedroom and the sewing room where all the seized coins and coin paraphernalia were retrieved were likely places of concealment for this stolen property, it was reasonable for the officer to look in those places. The remaining areas "searched" were also likely places of concealment, were subjected to no more than cursory visual observation, and in any event yielded no evidence.

The recognized objective of restoring the stolen property to its owner would not be served by arbitrarily restricting the search to the particular room fortuitously fixed as the place of arrest. Such a restriction would be a novel departure from past practice. *See, e.g.,* the search upheld in *Harris v. United States,* 331 U.S. 145, 152 (1947), the extensiveness and intensity of which dwarfs what took place here. Substitution of an inflexible standard for the present guideline of reasonableness under all the circumstances of the particular case would give rise to continual problems of definition and distinction. If the scope of reasonable search is to be limited to a particular circumference around the suspect, or to the room where the arrest takes place, how large may the circumference or the room be? What of hallways, and of a room that actually is no more than an area divided by a partition from the remainder of the room?

Petitioner's contention that the arrest was a mere pretext for the search and was deliberately delayed and maneuvered so as to enable the arresting officer to search petitioner's residence is sheer speculation refuted by an unequivocal record. *See Abel v. United States,* 362 U.S. 217, 225-28 (1960). The period of less than six hours between issuance of the arrest warrant and execution of the warrant was occupied by the Orange Police Department's customary preparation of a warrant packet, by other burglary investigations occupying the time of the arresting officer, and by the time spent contacting the Santa Ana police in whose jurisdiction petitioner's residence was located. Moreover, the arresting officer expressly desired not to embarrass petitioner by arresting him at the latter's place of

employment. Certainly petitioner had no constitutional right to be arrested at the earliest or most convenient time, nor at a particular place (such as the dental establishment at which he worked) where the officer would be least likely to find incriminating evidence as the result of a search incident to the arrest. *See Hoffa v. United States,* 385 U.S. 293, 310 (1966).

Everything about the search exuded reasonableness. The officer's conduct did not consist of merely formal or perfunctory compliance with the bare essentials of the Fourth Amendment's mandate of reasonableness. Before arresting petitioner, the officer consulted the district attorney's office on numerous occasions, complying with the suggestion that he obtain still more evidence connecting petitioner to the burglary before arresting him. Thereafter the officer filed a complaint seeking a warrant for petitioner's arrest—not out of any erroneous view that the law required it, but merely out of a commendable preference for this mode of procedure whenever the circumstances permitted it.

The arrest and the search were effected in a particularly reasonable manner. In accordance with the practice of his department, the arresting officer (Officer Del Coma from the City of Orange Police Department) had two officers from the Santa Ana Police Department accompany him since petitioner's residence was located in that jurisdiction. Officer Del Coma knocked on the door, identified himself to petitioner's wife, and asked whether he and the other officers could enter. Petitioner was advised of his rights and treated with the utmost courtesy. He was shown the warrant to read and examine.

The manner of conducting the search was restrained and designed to minimize the invasion of petitioner's privacy. Petitioner's wife was asked to accompany the officer in his attempt to retrieve the coins missing from The Money Vault. This was done for the express purpose of having her, rather than the officer, open the drawers and move their contents. This she did without hesitation. There was no ransacking. Only coins and coin paraphernalia which appeared to have been taken from The Money Vault were retrieved; many other such items were left at the premises. The search took only forty-five minutes; the officer proceeded as quickly as possible because of his desire not to linger with petitioner unnecessarily. Immediately following the search a detailed inventory of the seized property was compiled in petitioner's presence, and petitioner was given a copy.

In view of Mr. Slocum's status as a dealer with a continuously changing stock, and the difficulty generally in distinguishing one coin (even a rare item) from other specimens of the same denomination, it is not surprising that none of the seized coins were positively identified as from The Money Vault burglary. However, a comparison of some of the items stolen with some of the coins recovered at petitioner's residence suggests strongly that they were the same. That a small portion of the seized coins turned out to be the fruits of another burglary committed by petitioner, that of the Pulati residence, did not require exclusion of those coins from evidence. *Abel v. United States*, 362 U.S. 217, 238 (1960).

Clearly the present search and seizure was impeccable. Should it be invalidated solely because of the arresting officer's failure to employ a search warrant?

Granted the law's *preference* for search warrants, it is a totally different thing to hold that the States have violated the Constitution by accepting this Court's express invitation to develop workable rules, governing arrests and searches, based on the principle of reasonableness under all the circumstances of the case rather than on the practicability of obtaining a search warrant. *See Ker v. California,* 374 U.S. 23, 33-34, 41 (1963), citing with approval *United States v. Rabinowitz,* 339 U.S. 56, 61, 63 (1950). *See also Sibron v. New York,* 392 U.S. 40, 60-61 (1968).

The rule of *Trupiano v. United States,* 334 U.S. 699 (1948), expressly overruled in *Rabinowitz* two years later, held invalid any lawful search conducted without a search warrant under circumstances where it would have been practicable to obtain a search warrant. It is respondent's position that re-adoption of the *Trupiano* rule is not required by the Constitution and would be highly undesirable from the standpoint of sound judicial policy. However, it is submitted that the present search would pass muster even under the stringent requirements of *Trupiano,* provided the "practicability" requirement were given an interpretation consistent with this Court's stated concern with "the practical demands of effective criminal investigation and law enforcement." *Elkins v. United States,* 364 U.S. 206, 222 (1960). Although the arresting officer in the present case could have obtained a search warrant, the practical difficulties involved excused the officer's failure to proceed by this method.

Problems peculiar to the description of thousands of coins would have made it extremely burdensome in terms of time and effort for Officer Del Coma to exe-

cute an affidavit upon which a search warrant could properly issue. Since petitioner was known to have his own coin collection, the requirement of particular description would have necessitated an extremely detailed affidavit, perhaps individually describing each coin, in order to permit the stolen coins to be distinguished from petitioner's own collection on the premises. *Stanford v. Texas*, 379 U.S. 476, 485-86 (1965); *Marron v. United States*, 275 U.S. 192, 196 (1927); *Aday v. Superior Court*, 55 Cal. 2d 789, 795-96 (1961) [362 P.2d 47, 51].

However, putting aside considerations peculiar to the instant case, it is apparent that a blanket rule requiring a search warrant absent emergency circumstances would not serve to protect the average citizen's right to privacy and would only hinder his right to effective protection from lawlessness.

It has been said that it takes two hours under ideal conditions to obtain a search warrant. Nationwide in 1967 there were 239,461 arrests for burglary alone (and 1,605,700 reported burglaries committed). A rule requiring a search warrant in all but emergency situations would place an intolerable burden on magistrates, prosecutors, and law enforcement officers without effecting a commensurate advancement of the rights of the individual. Studies have shown that the protection theoretically afforded by the warrant procedure is often illusory and in any event rarely affords the suspect more careful and deliberate consideration than that

which petitioner received from the police force and the district attorney's office involved in the present case.

A rule requiring a search warrant in all but emergency situations would not achieve the dubious goal of total "uniformity" and would provide far more problems than the flexible *Rabinowitz* test. A uniform rule is an inappropriate means with which to cope with the heterogeneous and everchanging conditions that daily confront the average officer in metropolitan, suburban, and rural jurisdictions throughout the various regions of the nation. Moreover, such a rule is unnecessary to ensure the use of search warrants, since there are many incentives to use warrants increasingly and there is evidence that law enforcement officers are advised by prosecuting agencies to proceed by this method. Significantly, this Court has on many occasions noted that the exclusionary rule is the most effective means of securing compliance with the Fourth Amendment's proscription against unreasonable searches and seizures, and California law provides a multitude of opportunities before and after trial for determining whether an arresting officer really had probable cause prior to making the arrest and the search incident thereto.

As they become needed, guidelines as to what is a reasonable search under particular circumstances can best be formulated on a case by case basis as in the past, the validity of these standards being determined by eventual judicial review of the cases applying the standards. This pragmatic approach, unlike attempts to place

unknown future cases into molds of the present, would be consistent with this Court's well-settled practice "not to formulate a rule of constitutional law broader than is required by the precise facts presented in the record." *Garner v. Louisiana,* 368 U.S. 157, 163 (1961).

Considering the enormous increase in the crime rate and the dismally low percentage of stolen property recovered, this is "a rather inopportune time to create a single rule more than the Constitution plainly requires." *Mancusi v. De Forte,* 392 U.S. 364, 373 (1968) (dissenting opinion of Mr. Justice Black, concurred in by Mr. Justice Stewart). In the present case the arresting officer had sufficient information to obtain a search warrant and did nothing that he could not have done pursuant to a warrant. Nor was justification of the search facilitated in any way by the fact that judicial review occurred subsequent to the search rather than as an antecedent thereto. Petitioner received the substance of the protection which a search warrant is designed to provide. The officer's action in conducting the search as an incident to the arrest instead of by search warrant added little if anything to the invasion of petitioner's privacy occasioned by his concededly lawful arrest. *Trupiano v. United States,* 334 U.S. 699, 714 (1948) (dissenting opinion of Chief Justice Vinson). On the contrary, a greater quantum of information was perhaps required of the officer than if he had had a search warrant. *Aguilar v. Texas,* 378 U.S. 108, 111 (1964). To insist upon the use of a search war-

rant in this type of situation "where the issuance of such a warrant can contribute nothing to the preservation of the rights which the Fourth Amendment was intended to protect," would "menace the effective operation of government which is an essential precondition to the existence of all civil liberties." *Trupiano v. United States,* 334 U.S. 699, 714-15 (1948) (dissenting opinion of Chief Justice Vinson, concurred in by Mr. Justice Black and Justices Reed and Burton).

Finally, even if it is assumed that the search were unlawful and its fruits improperly received in evidence, such error would clearly be harmless beyond a reasonable doubt as to both offenses. *Chapman v. California,* 386 U.S. 18, 24 (1967). The circumstantial evidence of petitioner's guilt of the Pulati burglary was so abundant that the reception of evidence establishing that some of the Pulatis' coins were recovered at petitioner's residence during the search did not bring about a verdict which would not otherwise have resulted. *A fortiori,* there was no prejudice as to the conviction involving The Money Vault burglary, since none of the coins recovered during the search were identified as from The Money Vault burglary, and since petitioner made extrajudicial statements to several civilian witnesses admitting that he had committed this burglary.

ARGUMENT

I

EXISTING LAW AND CONSIDERATIONS OF POLICY COMPEL THE CONCLUSION THAT IT WAS REASONABLE IN A STATE PROCEEDING FOR A POLICE OFFICER, AS AN INCIDENT OF A VALID BURGLARY ARREST AND WITHOUT A SEARCH WARRANT, TO SEARCH THE PLACE OF PETITIONER'S ARREST FOR PROPERTY BELIEVED STOLEN BY PETITIONER DURING THE BURGLARY

Petitioner's claim of error is based entirely on the admission in evidence of certain rare coins which, he contends, were obtained as the result of a search and seizure conducted in purported violation of the Fourth and Fourteenth Amendments to the Constitution. Inasmuch as the officer who conducted the search had not procured a search warrant, did not obtain a valid consent to search the premises, and no emergency situation was present, the validity of the search and seizure depends initially upon the legality of the arrest and secondly upon whether the search and seizure of the stolen coins was a reasonable incident of the arrest.

A. Under This Court's Ruling in Giordenello v. United States, 357 U.S. 480 (1958), the Arresting Officer's Action in Securing an Arrest Warrant Which Was Subsequently Held Defective by the State Courts Did Not Preclude the Prosecution From Justifying the Arrest, at the Trial and on Appeal, on the Theory of Probable Cause Apart From the Warrant

The trial court upheld the September 13th arrest on two separate grounds, holding (1) that the warrant of arrest was valid, and (2) that the information in the possession of Officer Del Coma gave him probable

cause to arrest petitioner apart from the warrant of arrest. (R. 219-21, 222.) The evidence in support of the trial court's finding of probable cause is set forth at length in subsection (a) of the preceding Statement of the Proceedings.

The California Supreme Court found this arrest warrant to be defective under its holding in the companion case of *People v. Sesslin,* 68 Cal. 2d 418 (1968) [439 P. 2d 321] (R. 402-18),[9] because the complaint upon which it was issued (*see* Appendix A to Respondent's Brief) was "insufficient to support a valid warrant." *People v. Chimel,* 68 Cal. 2d 436, 440 (1968) [439 P.2d 333, 335] (R. 421.) The *Sesslin* holding was premised on this Court's decisions in *Giordenello v. United States,* 357 U.S. 480, 486 (1958), *Aguilar v. Texas,* 378 U.S. 108, 112(n.3), 114-15 (1964), and *Barnes v. Texas,* 380 U.S. 253 (1965) [reversing *Barnes v. State,* 390 S.W.2d 266 (Tex. Crim. App. 1964)]. *People v. Sesslin, supra* at 422-24 [439 P.2d at 324-26] (R. 403-06.)

However, the California Supreme Court, relying on this Court's opinions in *Giordenello, supra* at 487-88, *Go-Bart Co. v. United States,* 282 U.S. 344, 356 (1931), and *Stallings v. Splain,* 253 U.S. 339, 342 (1920), concluded that there was probable cause to arrest petitioner, who "unlike the petitioner in Giordenello, ... obtained ample notice that the prosecution did not rest the justification for the arrest solely on the warrant."[10]

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[9]Certiorari was denied by this Court in the *Sesslin* case on February 24, 1969. (37 U.S.L.W. 3308.)

[10]*Giordenello, Aguilar v. Texas,* 378 U.S. 108 (1964), and *Ker v. California,* 374 U.S. 23 (1963), were called to the atten-

(This footnote is continued on the next page)

People v. Chimel, *supra* at 441 [439 P.2d at 336] (R. 422.)

The court added,

". . . Moreover, no evidence even intimates that Del Coma procured the warrant in bad faith or exploited the illegality of the warrant. (Contrast Go-Bart Co. v. United States, supra, 282 U.S. 344, 358. . . .) If Del Coma had been proceeding without a warrant in arresting defendant, the arrest would have been lawful. To invalidate the arrest here *solely* because the arresting officer first obtained a warrant supported by a constitutionally insufficient complaint would not further the policies of the Fourth Amendment but would subvert its preference for arrests and searches conducted pursuant to warrants."[11] (Emphasis by the court.)

People v. Chimel, supra at 442 [439 P.2d at 337] (R. 423-24.)

". . . Officers would very likely eschew the warrant that could both fall of its own weight and bring down with it the structure of an otherwise impeccable search and seizure."

People v. Chimel, supra at 444 [439 P.2d at 338] (R. 427);

See United States v. Ventresca, 380 U.S. 102, 108-09 (1965).

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tion of the trial court (R. 30-31, 207) prior to its ruling that there was probable cause to arrest petitioner apart from the warrant of arrest. (R. 219-21, 222.)

[11]The test, as expressed by this Court in a somewhat analogous situation involving the exclusion of evidence under the Fourth Amendment, is " 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' " *Wong Sun v. United States*, 371 U.S. 471, 488 (1963). *See also Hoffa v. United States*, 385 U.S. 293, 308-09 (1966); *Nardone v. United States*, 308 U.S. 338, 341 (1939).

Because in *Giordenello* the Government relied entirely in the lower courts on the validity of the warrant in defending the legality of the defendant's arrest, this Court held that the Government was not free before the Court to justify the arrest on grounds apart from the warrant. It was held that injection of this new theory "would unfairly deprive petitioner of an adequate opportunity to respond." The Court was careful to note, however, that in the event of a new trial the Government could "seek to justify petitioner's arrest without relying on the warrant." (357 U.S. at 488.) Numerous federal appellate decisions have upheld arrests supported by probable cause even though the arresting officer acted pursuant to an arrest warrant defective under *Giordenello*. *See* cases cited in *People v. Chimel*, 68 Cal. 2d at 440 (n.1) [439 P.2d at 336] (R. 422.)

See also United States v. Rabinowitz, 339 U.S. 56, 60 (1950);

Go-Bart Co. v. United States, 282 U.S. 344, 355-56 (1931).

In light of *Giordenello*, and California's permissible development of "workable rules governing arrest," *Ker v. California*, 374 U.S. 23, 34 (1963), the arrest of petitioner on September 13, 1965, clearly was lawful.

B. The Right to Conduct a Reasonable Search Incident to Arrest, in Particular a Search to Recover Property Stolen During the Offense for Which the Suspect Is Being Arrested, Is Well Founded in the Common Law and in This Court's Decisions

The Fourth Amendment to the Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unrea-

sonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Significantly the Fourth Amendment does not confer a narrow grant of the power to search; instead it recognizes only a qualification, on the existing right to search, against *unreasonable* searches. The development of the common law in England and the American Colonies is a relevant source of information in ascertaining the meaning of the Fourth Amendment's proscription against searches and seizures that are "unreasonable."

Weeks v. United States, 232 U.S. 383, 389-92 (1914);

Boyd v. United States, 116 U.S. 616, 624-27 (1886).

". . . The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. . . ."

Robertson v. Baldwin, 165 U.S. 275, 281 (1897).

The repeated references in Petitioner's Opening Brief to the somewhat ambiguous Clauses 38 and 39 of the Magna Carta do not support petitioner's implication that the search of a man's residence under the present circumstances would not have been permitted at common law. Commentators have recognized that the Magna Carta "was in any event not an early analogue to present-day search restrictions."[12] J. Landynski, Search and Seizure and the Supreme Court 26 (1966).

By the late seventeenth century, "[t]he principle that search and seizure must be reasonable, that there must be a balancing of the problems of the administration of justice with those of the freedom of the individual, was emerging slowly and was assuming more and more the character of an underlying concept of jurisprudence." N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 34 (1937).

Restrictions on search and seizure in England and the American Colonies were designed primarily to end the practice of issuing general warrants, which had become widespread by the sixteenth and seventeenth centuries and left unspecified one or more of the following: the offense charged, the property to be seized, the premises to be searched, or the suspected offender. Regarding the English experience, "[w]hat is significant to note is that this history is largely a history of con-

[12] "It was merely intended to prevent the king from swooping down, as was his practice, on those who had offended him and arbitrarily meting out judgment without recourse to established legal procedures of the day (such as trial by combat). . . ." J. Landynski, Search and Seizure and the Supreme Court 26 (1966). *See also* N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 20-21 (1937).

flict between the Crown and the press. It was in enforcing the laws licensing the publication of literature and, later, in prosecutions for seditious libel that general warrants were systematically used." *Stanford v. Texas*, 379 U.S. 476, 482-83 (1965). *See also* J. Landynski, Search and Seizure in the Supreme Court 20-24 (1966); N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 24-29 (1937). In the Colonies the controversy over general warrants allowing customs agents the assistance of peace officers to enter forcibly and unannounced for the purpose of searching any place at any time for any suspected customs infraction is said to have been a major cause in the chain of circumstances leading to the American Revolution and foremost in the minds of the men who drafted the Fourth Amendment.

Ker v. California, 374 U.S. 23, 51-52 (1963) (opinion of Mr. Justice Brennan);
Landynski, *supra* at 30-38;
Lasson, *supra* at 33.

Chief Justice Hale's authoritative History of the Pleas of the Crown, written in the seventeenth century by one of the greatest jurists in English history, is considered the leading work in this area[13] and rejects the more restrictive view propounded by Lord Coke and relied upon by petitioner. Hale condemned general warrants but rejected Coke's view that any search for stolen goods, even pursuant to a search warrant, was improper. 2 M. Hale, Pleas of the Crown 112-14 (1st

[13] 1 J. F. Stephen, A History of the Criminal Law of England 193 (1883); Lasson, *supra* at 35.

Am. ed. 1847). *See* N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 36 (1937). Hale's position, which reflected the prevalent practice of his times, was that "at common law a private person might and a constable ought to arrest supposed felons upon suspicion without warrant" provided there are "reasonable grounds of [their] having committed any felony; whether in fact any such felony has been committed or not." 1 J. F. Stephen, A History of the Criminal Law of England 192-93 (1883). *See also* 3 S. W. Holdsworth, A History of English Law 601-02 (3d ed. 1923).

This Court has noted that the "seizure of stolen goods is authorized by common law," *Boyd v. United States,* 116 U.S. 616, 623 (1886), and that the government has a right "always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime." *Weeks v. United States,* 232 U.S. 383, 392 (1914). *See* the opinion by Justice Cardozo, then Judge of the New York Court of Appeals, in *People v. Chiagles,* 237 N.Y. 193 (1923) [142 N.E. 583]. Thus it is only unreasonable searches that were prohibited under the common law, as by the enactment of the Fourth Amendment. "It was recognized by the framers of the Constitution that there were reasonable searches for which no warrant was required" and that among such searches was the search of a person incident to a valid arrest. *United States v. Rabinowitz,* 339 U.S. 56, 60 (1950).

Implicit in the right to search an arrested person for the fruits of the crime for which he is being arrested is the right to search in a reasonable manner

the area "in his control," *Carroll v. United States,* 267 U.S. 132, 158 (1925), and the "place where the arrest is made," in pursuance of this objective. *Agnello v. United States,* 269 U.S. 20, 30 (1925). Under some circumstances a search, incident to arrest, for the fruits of a crime or the means by which it is being carried on may reasonably extend "to all parts of the premises used for the unlawful purpose." *Marron v. United States,* 275 U.S. 192, 199 (1927). Certainly the search of such an area does not in any meaningful way add to the invasion of the suspect's privacy occasioned by the lawful arrest.[14] *Trupiano v. United States,* 334 U.S. 699, 714 (1948) (dissenting opinion of Chief Justice Vinson.)

This Court has set forth the following criterion for determining the lawfulness of a search:

> ". . . The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn

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[14]This Court recently rejected the long-standing federal rule prohibiting seizure of items of merely evidential value. *Warden v. Hayden,* 387 U.S. 294, 310 (1967). This rule had led the Court to the conclusion that in *United States v. Lefkowitz,* 285 U.S. 452, 464-65 (1932), and *Go-Bart v. United States,* 282 U.S. 344, 358 (1931), certain papers were unlawfully obtained in the course of an exploratory search for mere evidence of crime. In *Lefkowitz* the Court held that the seized papers could not have been searched for and seized even had the officers obtained a valid search warrant. The Court also found the search to be a general search for evidence of the charged offense "or some other crime." 285 U.S. at 464-65. *Go-Bart* is distinguishable from the present case on the additional grounds that there one of the agents falsely claimed to have a search warrant, *cf. Bumper v. North Carolina,* 391 U.S. 543, 549-50 (1968), employed threats of force, and ransacked the premises "in the hope that evidence of crime might be found." 282 U.S. at 358. *See Harris v. United States,* 331 U.S. 145, 152 (n. 16), 153 (1947).

depends upon the facts and circumstances—the total atmosphere of the case. It is a sufficient precaution that law officers must justify their conduct before courts which have always been, and must be, jealous of the individual's right of privacy within the broad sweep of the Fourth Amendment."

United States v. Rabinowitz, 339 U.S. 56, 66 (1950).

C. Under Current Standards the Present Search Was Reasonable, and the Continued Validity of These Standards Is Apparent in Light of the Necessity of Balancing the Traditional Right of Citizens to Be Free From Unreasonable Invasions of Privacy With the Need of Citizens for Effective Protection From Increasing Crime

The California Supreme Court, in a judgment concurred in by six of the seven justices, held that the search in question was "a 'reasonable' search within the meaning of the Fourth Amendment" and affirmed the judgment of conviction,[15] relying on this Court's decisions in *Ker v. California,* 374 U.S. 23, 41 (1963); *Marron v. United States,* 275 U.S. 192, 196, 198-99 (1927); and *Agnello v. United States,* 269 U.S. 20, 30 (1965). *People v. Chimel,* 68 Cal. 2d 436, 441 (n.2), 442 (1968) [439 P.2d 333, 336, 337] (R. 422-24.)

[15]The sole dissenter, Justice Peters, concluded that the judgment should be reversed only because he felt the arresting officer should be bound to abide by his "election" to arrest petitioner pursuant to the warrant of arrest. *People v. Chimel,* 68 Cal. 2d 436, 445 (1968) [439 P.2d 333, 339] (R. 428.)

The court found that the search was made in good faith, 68 Cal. 2d at 442 [439 P.2d at 337] (R. 423-24), and concluded:

> ". . . Officer Del Coma acted reasonably in going to defendant's home to execute the warrant; the search was incident to an arrest based on probable cause, and only items which reasonably appeared to be connected with the Money Vault burglary were seized. That some of such items were subsequently identified as coins and medals stolen from the Pulati residence in February 1965 does not invalidate the search which produced them. Hence the coins and other numismatic items which the prosecution introduced into evidence were admissible." 68 Cal.2d at 442-43 [439 P.2d at 337] (R. 424-25.)

The search of petitioner's residence incident to his arrest on September 13, 1965, which search turned up the evidence whose admissibility at trial is presently contested, was clearly reasonable in light of this Court's decisions upholding the validity of searches without a search warrant as incident to arrest effected by arrest warrant, *United States v. Rabinowitz,* 339 U.S. 56 (1950), and as incident to arrest supported by probable cause. *Ker v. California,* 374 U.S. 23 (1963).

As will be explained in more detail below, the foregoing conclusion is compelled by evidence in the record indicating the following: (1) petitioner's arrest on the date in question was lawful; (2) as an incident of that arrest the arresting officer could search the area in petitioner's control for the property stolen during the course of the burglary for which petitioner had

just been arrested; (3) the scope of the permissible search could extend beyond the front room where petitioner was arrested to the two rooms where the stolen property was recovered; (4) there was no unreasonable delay in effecting petitioner's arrest, nor was the arrest a pretext for the search that followed; and (5) the arresting officer had sufficient information to obtain a search warrant, but there was no reason to invalidate the search merely because he failed to do so; moreover, under the peculiar circumstances of the present case the obtaining of a search warrant would have required an unreasonable amount of time and effort on his part.

(1) The Arrest Was Lawful

Petitioner at page 28 of his Opening Brief concedes, as he must, that the facts known to Officer Del Coma on September 13, 1965, afforded the officer probable cause to arrest petitioner for the burlary of The Money Vault. The evidence constituting probable cause is set forth in subsection (a) of respondent's Statement of the Proceedings and clearly met the test of being within the arresting officer's knowledge or based upon reasonably trustworthy information, and being sufficient in itself to warrant a man of reasonable caution in the belief that the offense of burglary had been committed by petitioner.

Ker v. California, 374 U.S. 23, 34-35 (1963); *Brinegar v. United States,* 338 U.S. 160, 175-76 (1949).

(2) The Time, Place, Objective and Manner of Conducting the Search Were Reasonable

As has been shown in the preceding subargument, both the common law and the decisions of this Court interpreting the Fourth Amendment have sanctioned the search of premises under the control of an arrestee if the objective of the search is deemed reasonable, as is the recovery of stolen property.

Ker v. California, 374 U.S. 23, 34-35 (1963);

United States v. Rabinowitz, 339 U.S. 56, 63-64 (1950);

Boyd v. United States, 116 U.S. 616, 623 (1886).

In support of such a search it is significant, as Mr. Justice Fortas had recent occasion to note, that the fruits of a crime "are an object of the pursuit or arrest of the suspect, and should be restored to their true owner." *Warden v. Hayden,* 387 U.S. 294, 311 (1967) (concurring opinion).

The record indicates unequivocally that both in terms of time and place the search was a reasonable incident of the arrest. The search of the residence occurred immediately following petitioner's arrest inside the residence. (R. 202, 231.) An otherwise reasonable search incident to arrest is not rendered invalid solely because a dwelling place rather than a business premises is the subject of the search. *Ker v. California,* 374 U.S. 23, 41-42 (1963); *Harris v. United States,* 331 U.S. 145, 151 (1947). It is also beyond dispute that the objective of the September 13th search was proper, the search being directed toward recovery of the coins and coin paraphernalia which had been stolen from The Money Vault. (R. 202, 204.)

Officer Del Coma's conduct did not consist of merely formal or perfunctory compliance with the bare essentials of the Fourth Amendment's mandate of reasonableness. Instead of relying solely on his own expertise as a burglary detective of several years' experience (R. 114, 201) in evaluating the information which he had gathered concerning The Money Vault burglary, he submitted several reports to Deputy District Attorney Robert Law before effecting the September 13th arrest. (R. 378-79.) After numerous conversations with Mr. Law, Officer Del Coma proceeded to contact Mr. Parsons to acquire still more evidence connecting petitioner to the burglary. (R. 379-82.)

Thereafter Officer Del Coma filed a complaint seeking the issuance of a warrant of arrest by a judge of the Municipal Court. The officer did not take this action because of any erroneous view on his part that the law required it; it was his general practice to do so whenever time permitted. (R. 229.) His testimony, uncontradicted at the trial, was that there was no intentional delay or maneuvering on his part regarding execution of the warrant. (R. 237.) That ultimately on appeal the warrant was held defective despite its compliance with procedure which had been sustained by the California courts for many years, does not detract in any way from the officer's good faith or the reasonableness of his search.

Taking care to follow the practice of his department, the City of Orange Police Department, Officer Del Coma also contacted the Police Department of the City of Santa Ana, in whose jurisdiction petitioner's residence was located, and had two officers from that department accompany him in executing the warrant of

arrest.[16] (R. 201.) Although less exemplary procedure has been sustained by this Court on past occasions (*see Ker v. California*, 374 U.S. 23, 37-41 [1963]), Officer Del Coma knocked on the door of the house, identified himself to the person who answered (petitioner's wife), asked whether he and the other officers could enter (R. 202), and treated petitioner with the utmost courtesy. Petitioner was informed of the warrant, was shown it to read and examine, and was advised of his rights. (R. 202, 231.) Although the law authorized the officer to search incident to the arrest, petitioner was still asked whether he had any objections to a search. When petitioner voiced his preference that the officer not search, petitioner was advised that a search was permissible pursuant to a lawful arrest. (R. 202.)

The manner of conducting the search itself was restrained and designed to minimize the invasion of petitioner's privacy. Petitioner's wife was asked to accompany Officer Del Coma in his attempt to retrieve the coins missing from The Money Vault. (R. 202.) This was done for the express purpose of having her,

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[16]Ironically, in his supplemental reply brief in the California Court of Appeal, petitioner argued that the two Santa Ana officers did not have probable cause to arrest petitioner for The Money Vault burglary and that their mere presence at the scene of the arrest was insufficient to cure the alleged irregularity in the arrest arising from the fact that petitioner's residence was outside Officer Del Coma's jurisdiction. *Cf.* California Penal Code section 830.1, enacted in 1968, which provides that a peace officer's authority extends to any place in the State as to any offense which he has probable cause to believe was committed in his jurisdiction. Under the law applicable at the time of the present arrest, *see People v. Martin*, 225 Cal. App. 2d 91, 93-95 (1964) [36 Cal. Rptr. 924, 926-27] (hearing denied by the California Supreme Court), the presence of the Santa Ana officers validated the arrest.

rather than the officer, open the drawers and move their contents. This she did without hesitation. There was no ransacking of any portion of the premises. (R. 203-04, 232, 238-39.) Only coins that appeared to have been taken from The Money Vault were retrieved by Officer Del Coma; many others were left at the premises.[17] (R. 204.) Other than a quantity of razor blades which, according to petitioner, were part of a "transaction, in payment for a coin deal" (R. 218), only coins and coin paraphernalia were seized. (*See* App. B to Resp. Br.) (This "coin deal" of course could have involved The Money Vault burglary.) Petitioner's wife apparently explained the nature of some of the items observed on the premises. (R. 239.) The coins that were taken were placed into two canvas satchels with which she provided Officer Del Coma. (R. 204-05, 223-24, 227-28.) An inventory of the seized coins was subsequently compiled in petitioner's presence, and petitioner was given a signed copy. (R. 205, 224.)

The search took only forty-five minutes. Because of his commendable desire not to linger with petitioner at the house under the circumstances, the officer proceeded "as quickly as possible." (R. 243.)

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[17]The question arises, how were some of the Pulatis' coins and medals seized if the officer was taking care to recover only coins that appeared to be from The Money Vault burglary. Considering the large number of coins seized and the small proportion identified by the Pulatis (*see* App. B to Resp. Br.), the answer is clear. Several boxes containing coins, as well as tubes, packages, and other containers, were recovered by the officer. (*See* App. B. to Resp. Br.) Most of the seized coins and medals were inside plastic tubes and cardboard boxes. (R. 205, 223, 227-28.) Officer Del Coma did not have to linger in the house with petitioner while the officer sorted through the large quantity of stolen property, coin by coin. If a box appeared to contain coins from The Money Vault, it was proper to seize it and thereby, of necessity, risk taking a few coins and medals which might be intermingled with The Money Vault coins.

It is fully understandable that the record does not indicate expressly whether or not Mr. Slocum subsequently was able to identify any of the coins recovered during the search as among those taken from The Money Vault. As a dealer, his stock was continuously changing. The record, as well as an examination of the exhibits themselves, suggests that even the rarer coins taken from The Money Vault were not readily identifiable in the sense of being distinguishable from other rare specimens of the same denomination.[18] Mr. Slocum specialized in Washington quarters, quarters were taken, and there were 145 Washington quarters among the coins recovered at petitioner's residence. A quantity of silver dollars was among the coins taken from The Money Vault, and the coins recovered at petitioner's residence included 28 silver dollars. (R. 89, 177; App. B to Resp. Br.)

That some of the coins recovered in the search were later identified as having been stolen during the Pulati burglary did not detract from the reasonableness of the search.

> ". . . When an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search it would be entirely without reason to say that he must return it because it was not one of the things it was his business to look for. See Harris, supra, 331 U.S., at 154-155."
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> *Abel v. United States,* 362 U.S. 217, 238 (1960).

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[18](R. 175-77; *compare* R. 272-74, 276-87, 296.) An exception is the somewhat uniquely marked 1877-S trade dollar taken from The Money Vault and sold to a coin dealer two months after the burglary, subsequent to the search of petitioner's residence. (R. 97, 108-11, 160-62, 306-07.)

(3) The Scope of the Search Was Reasonable

What then does petitioner find *unreasonable* in this search? He characterizes as "ransacking" the careful and restrained efforts of Officer Del Coma to retrieve the thousands of dollars of coins, comprising one-half to three-fourths of Mr. Slocum's inventory (R. 107), which the officer reasonably believed to be secreted at petitioner's house. Petitioner apparently considers the scope of the search sufficiently broad to render the search automatically invalid.

This Court has stated with respect to such a claim:

> "What is a reasonable search is not to be determined by any fixed formula. The Constitution does not define what are 'unreasonable' searches and, regrettably, in our discipline we have no ready litmus-paper test. The recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case. *Go-Bart Co. v. United States,* 282 U.S. 344, 357. Reasonableness is in the first instance for the District Court to determine. . . ."
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> *United States v. Rabinowitz,* 339 U.S. 56, 63 (1950).

The objective of the present search to recover stolen property being reasonable and the circumstances attending the conduct of the search being reasonable, was the search rendered constitutionally invalid solely because the property was recovered in a room other than that in which petitioner was arrested?

Once it is established that Officer Del Coma had the right to arrest petitioner and, *in order to recover stolen property,* to search the area under petitioner's

control, it seems mere formalism to urge that such a legitimate search for stolen property became unreasonable once it extended beyeond the room where the arrest was effected to the bedroom and the sewing room where the stolen coins were recovered.

The permissible scope of a search must certainly be defined in light of its legitimate objective rather than on the basis of arbitrary geographical distinctions. This Court has recognized that " 'Limitations upon the fruit to be gathered tend to limit the quest itself.' . . .". *Terry v. Ohio*, 392 U.S. 1, 29 (1968). Since the arresting officer was not free to, nor inclined to, conduct a general and exploratory search for evidence of offenses other than the burglary for which he was arresting petitioner, the scope of search consistent with his legitimate objective limited the search to those areas where the stolen coins would likely be secreted.

A search intended to recover stolen property of this type had to be of this scope. Such scope was "essential to fulfill the purpose of the exception" of searches incident to arrest to the rule that ordinarily searches are to be effected by means of search warrants. "The search for and seizure of fruits are, of course, justifiable on independent grounds: The fruits are an object of the pursuit or arrest of the suspect, and should be restored to their true owner." *Warden v. Hayden*, 387 U.S. 294, 310-11 (1967) (concurring opinion of Mr. Justice Fortas), cited in *Terry v. Ohio*, 392 U.S. 1, 19, 26, 29 (1968). The objective of restoration of the stolen coins to Mr. Slocum would not be served by arbitrarily restricting Officer Del Coma's search to the particular room fortuitously fixed as the place of arrest.

The imposition of such a restriction would be a novel departure from the past decisions of this Court upon which the State courts have placed much reliance.

See e.g., Warden v. Hayden, 387 U.S. 294, 298-99 (1967);

Harris v. United States, 331 U.S. 145, 152 (1947);

Marron v. United States, 275 U.S. 192, 198-99 (1927).

In *Harris,* the Court stated:

> *"Nor can support be found for the suggestion that the search could not validly extend beyond the room in which petitioner was arrested.* . . . Petitioner was in exclusive possession of a four-room apartment. His control extended quite as much to the bedroom in which the draft cards were found as to the living room in which he was arrested. The canceled checks and other instrumentalities of the crimes charged in the warrants *could easily have been concealed in any of the four rooms of the apartment.* Other situations may arise in which the nature and size of the object sought or the lack of effective control over the premises on the part of the persons arrested may require that the searches be less extensive. But *the area which reasonably may be subjected to search is not to be determined by the fortuitous circumstance that the arrest took place in the living room as contrasted to some other room of the apartment.*
>
> ". . . The same meticulous investigation which would be appropriate in a search for two small canceled checks could not be considered reasonable

where agents are seeking a stolen automobile or an illegal still. . . ." (Emphasis added.)

Harris v. United States, 331 U.S. 145, 152 (1947).

See also:

Beck v. Ohio, 379 U.S. 89, 91 (1964);

Ker v. California, 374 U.S. 23, 41-43 (1963).

The scope of the search upheld by this Court in *Harris* of course dwarfs the present search. In *Harris* the officers without a search warrant searched the entire apartment extensively and intensively, through bed linen and clothes and underneath carpets, for five hours.

Harris v. United States, supra at 149; *see also supra* at 183-84 (dissenting opinion of Mr. Justice Murphy).

Cf. Kremen v. United States, 353 U.S. 346 (1957).

The present search took approximately forty-five minutes and was as quick a search as Officer Del Coma considered possible under the circumstances. (R. 243-44.) The "basic, direct search" was made in the master bedroom and a second bedroom which was used as a sewing room. (R. 231.) Apparently all the seized items were recovered from these two rooms. (R. 204, 223.) Only those coins and coin paraphernalia which appeared to have been stolen from The Money Vault were seized, except for some razor blades which according to petitioner were part of a "coin deal" (which could possibly have involved The Money Vault burglary). (R. 204, 228; App. B. to Resp. Br.) Officer Del Coma had petitioner's wife accompany him into the

rooms, and it was she rather than he who opened drawers and moved the contents aside. There was no ransacking of any part of the premises. (R. 204, 232, 238-39.)

Petitioner incorrectly implies that the entire premises were intensively searched. Apart from the search of the bedroom and the sewing room, the "search" apparently consisted only of *looking into* the child's room, the attic opening, and the garage and *glancing around* the front room. There appears to have been no prying into hidden places, nor any seizure, in these areas. (R. 231-32, 239-40.) The only area, other than the two rooms where stolen property was recovered, where the record indicates there was any looking into places not open to the eye was perhaps the kitchen, where Officer Del Coma looked into several cupboards. Again the record does not indicate that anything was recovered from this area. (R. 231-32.) As for the inspection of the garage, Officer Del Coma knew that petitioner had tools, including a lathe, which he used to refinish coins. It was reasonable to expect that these tools as well as stolen coins might be in the garage. (R. 190, 191-92, 229-30.)

Respondent submits that the arresting officer had the right to search for the coins stolen from The Money Vault in all parts of petitioner's residence where he searched, since any of these places was a likely location of the stolen property. But even were this not the case, petitioner can predicate his claim of error only on the search of the two rooms where evidence, ultimately used against him at the trial, was recovered.

See Frisbie v. Collins, 342 U.S. 519 (1952);
People v. Marsh, 58 Cal. 2d 732, 746 (1962) [376 P.2d 300, 309].

It is respondent's position that to invalidate the present search merely because evidence received against petitioner at the trial was recovered in the bedroom and the sewing room, while petitioner's arrest took place in the front room, would be a novel departure from the past decisions of this Court and would not serve to further any meaningful policy considerations affecting searches incident to lawful arrests. Additionally, the imposition of such limitations upon the scope of permissible search would pose continual problems of definition and distinction. If the scope of reasonable search is to be limited to a particular circumference around the suspect, or to the room where the arrest takes place, how large may the circumference or the room be? What of hallways, and of a room that actually is no more than an area divided by a partition from the remainder of the room?[19] *See United States v. Rabinowitz*, 339 U.S. 56, 79 (1950) (dissenting opinion of Justice Frankfurter). It is doubtful that any fixed formula will achieve the necessary balance, between protection of the individual from unreasonable invasion of his privacy and the need for effective law enforcement techniques, which has been achieved by the current test of reasonableness under "the facts and circumstances—the total atmosphere of the case." *United States v. Rabinowitz, supra* at 66.

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[19]One commmentator states that there is no middle ground, rooted in principle, between two logical points of termination for search incident to arrest—either the person of the suspect and the objects within his reach, or alternatively the entire dwelling. J. Landynski, Search and Seizure and the Supreme Court 115 (1966). Some decisions have, however, imposed the somewhat arbitrary restriction that the police may search one room, but not more. *See State v. Adams,* 103 W. Va. 77 (1927) [136 S.E. 703, 704]; *State v. Rebasti,* 306 Mo. 336 (1924) [267 S.W. 858, 860].

(4) The "Delay" in Arresting Petitioner Was Not Unreasonable

Petitioner contends, at pages 28-29 of his Opening Brief, that the September 13th arrest was deliberately delayed and maneuvered so as to enable the arresting officer to search petitioner's residence, and that the arrest was therefore no more than a pretext for the search.

All the evidence in the record touching upon this point indicates that this was decidedly not the case. There is nothing more than petitioner's speculation upon which to base this claim of bad faith on the part of the officer, and under such circumstances Officer Del Coma must be presumed not to have been motivated by the considerations ascribed to him by petitioner.[20] In *Abel v. United States,* 362 U.S. 217, 225-28 (1960), this Court similarly found the record to be barren ground for a claim of bad faith on the part of the agents who arrested the defendant and searched his residence.

The following evidence in the record refutes petitioner's unsupported claim that the arrest was deliberately delayed and was a mere pretext for the search of petitioner's residence.

The burglary of The Money Vault took place on the night of August 14, 1965. (R. 245.) It was a few days after the burglary that petitioner made his suspicious statements to Mr. Slocum, the owner, and to Mr. Am-

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[20]The State "is entitled to the benefit of a presumption of proper police conduct," *Der Garabedian v. United States,* 372 F.2d 697, 699 (n. 1) (5th Cir. 1966), and "in the absence of evidence to the contrary it is presumed that the officers acted lawfully." *People v. Maddox,* 46 Cal. 2d 301, 304 (1956) [294 P.2d 6, 8], *cert. denied,* 352 U.S. 858 (1956). *See also Chappell v. United States,* 342 F.2d 935, 939 (n. 5) (D.C. Cir. 1965).

brose. (R. 105-06, 186-89, 230.) On August 25th Officer Del Coma interviewed petitioner at the police station. Petitioner was not in custody at the time. (R. 256-57, 265, 386.) The meeting between petitioner, Charles Hamburger, attorney Jones, and Officer Del Coma took place on August 30th. (R. 258-59, 343.) Meanwhile Officer Del Coma had submitted several reports to Deputy District Attorney Robert Law between August 15th and August 30th. (R. 378-79.) On August 30th Mr. Law requested that the officer obtain more evidence by contacting Mr. Parsons, to whom petitioner was reported to have admitted committing the burglary. (R. 380-82.) During the first week of September Officer Del Coma verified that petitioner had made the aforementioned admission to Mr. Parsons. (R. 195-96, 230.) During the early part of September the officer presumably learned of another telephone conversation between Mr. Slocum and petitioner wherein the latter had asked whether Mr. Slocum had ever thought "someone was trying to help you instead of hurt you by not cleaning you out completely." (R. 106-07.) During this period the officer also had several contacts with Hamburger regarding the stolen coins and received some of them from the Torrance Police Department, which had seized them in attorney Jones' office. (R. 268-69, 271.)

"It is as beneficial to the falsely accused, as it is detrimental to the lawbreaker, to have as complete an investigation as possible before determining whether to deprive the suspect of his freedom." *People v. Chrisman,* 256 Cal. App. 2d 425, 448-49 (1967) [64 Cal. Rptr. 733, 749] (hearing denied by the California Supreme Court.)

Clearly then Officer Del Coma did not unreasonably delay the *date* of petitioner's arrest. Was the particular *hour* at which the arrest took place the result of a deliberate delay?

The warrant for petitioner's arrest was obtained by Officer Del Coma from a Municipal Court judge at 10:39 a.m. As required by California Penal Code section 814, the warrant directed that petitioner be arrested "forthwith" and brought before that court. (App. A to Resp. Br.) Officer Del Coma interpreted the word "forthwith" as "right then . . . [w]hen practical."[21] (R. 236-37.)

The time between the issuance of the warrant of arrest and its execution that afternoon was occupied as follows. Officer Del Coma returned to his department and followed customary procedure by checking the warrant into the warrant detail. An entry was made on a master card, and a warrant packet was made out by the records section. This policy was followed, except where there was a danger of immediate flight, because of "problems arising out of arrests on suspicion when there is a Warrant being secured." (R. 237-38.) The

[21] *Cf.* California Penal Code section 1529 which prescribes that search warrants command that "immediate search" be made. Section 1534 provides that the warrant "must be executed and returned to the magistrate who issued it within ten days after its date." *See also Spinelli v. United States*, 382 F.2d 871, 885-86 (8th Cir. 1967), *reversed on another ground*, 89 S.Ct. 584 (1969), and *Mitchell v. United States*, 258 F.2d 435, 436 (D.C. Cir. 1958), with reference to the requirement in Rule 41 (c)-(d), Federal Rules of Criminal Procedure, that search warrants be executed "forthwith." Rule 4, relating to warrants of arrest, does not require that they be executed forthwith or at the first opportunity. *United States v. Weaver*, 384 F.2d 879, 880-81 (4th Cir. 1967), *cert. denied*, 390 U.S. 983 (1968); *United States v. Joines*, 258 F.2d 471, 472-73 (3d Cir. 1958), *cert. denied*, 358 U.S. 880 (1958).

records section finished processing the warrant at approximately 2 p.m. that day. Presumably the department had other warrants and matters to process as well. (R. 238.)

That day Officer Del Coma was "actively engaged" in several other burglary investigations, both prior to and subsequent to 2 p.m. (R. 238.) (Officer Del Coma's monthly caseload of burglaries committed in the City of Orange ranged from a minimum of forty-five to a maximum of eighty. [R. 241.] Additionally, Officer Del Coma worked closely with the burglary detail of other police departments in the county on burglaries committed in other jurisdictions. [R. 241-42.]) Before arriving at petitioner's Santa Ana residence at approximately 4 p.m. that day, Officer Del Coma followed customary procedure in contacting the Santa Ana officers so that they could accompany him, since petitioner's residence was located in that city rather than in Officer Del Coma's jurisdiction of the City of Orange. (R. 201.)

Petitioner did not arrive until ten or fifteen minutes after the officers. (R. 231, 243.) Officer Del Coma had known the location of petitioner's place of employment as a dental technician but "had gone to the residence to keep from approaching him at his place of business to cause him any problem there." (R. 202, 223, 235-36, 237.) Obviously Officer Del Coma, being occupied with the other burglary investigations after 2 p.m., might have also felt that there would be a chance of missing petitioner at his place of employment.

Petitioner implies, at page 30 of his Opening Brief, that true concern for petitioner's well-being would have

caused Officer Del Coma to arrest petitioner in the presence of his employer instead of in the presence of petitioner's wife and child. Petitioner's point is debatable, and certainly the officer cannot be held to Solomonic judgment on this point. Suffice it to say that it was probably preferable from petitioner's standpoint to have the arrest take place in the presence of his wife, who would certainly learn of the arrest in any event, than in the presence of petitioner's employer, who, since petitioner was very soon released on bail (R. 240), would probably learn of the arrest only in the event the case went to trial. *See Katz v. United States,* 389 U.S. 347, 350 (n. 1) (1967), quoting *Griswold v. Connecticut,* 381 U.S. 479, 509 (1965) (dissenting opinion of Mr. Justice Black). Moreover, the record indicates that petitioner was treated with the utmost courtesy and was not subjected to any personal indignity before his wife or elsewhere.[22]

Officer Del Coma testified at the trial that "there was no particular delay on my part." He specifically denied delaying execution of the warrant of arrest until the time of petitioner's return home "so that the arrest could be made at his home and used as a pretense to search his home." (R. 237.)

In the face of the aforementioned uncontradicted evidence and in the absence of any evidence supporting petitioner's claim of deliberate delay and "maneuvering" on the part of the arresting officer, it is clear that the arrest was not a pretext for an exploratory search of petitioner's residence.

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[22]It is clear that the officer could have searched those portions of the premises where petitioner worked which were under petitioner's control, had the arrest been made at petitioner's place of employment. *See Mancusi v. DeForte,* 392 U.S. 364, 368-69, 370-71 (1968).

Officer Del Coma was "not required to neglect all other investigatory and enforcement activity in order to execute [the] arrest warrant." *United States v. Weaver,* 384 F.2d 879, 880 (4th Cir. 1967), *cert. denied,* 390 U.S. 983 (1968). Just as petitioner "had no constitutional right to be arrested" at an earlier, more convenient time, *Hoffa v. United States,* 385 U.S. 293, 310 (1966), or at the first opportunity, *United States v. Joines,* 258 F.2d 471, 472-73 (3d Cir. 1958), *cert. denied,* 358 U.S. 880 (1958), he had no right to be arrested at a particular place (such as the dental establishment at which he worked) where the officer would be least likely to find incriminating evidence as the result of a search incident to the arrest.

In view of the absence of any evidence in the record to indicate that Officer Del Coma's "purpose in entering was to search . . ., and not to arrest petitioner," *cf. Jones v. United States,* 357 U.S. 493, 500 (1958), it cannot be assumed that the officer acted in bad faith and used the arrest as a mere pretext for an exploratory search. *Abel v. United States,* 362 U.S. 217, 225-28 (1960). On the contrary the record establishes that until the date of arrest Officer Del Coma was acquiring more and more information indicating petitioner's probable guilt of the burglary, that the circumstances present on the day of the arrest made a late-afternoon arrest at petitioner's residence the most logical and convenient choice, and that the officer's secondary purpose, to retrieve the thousands of dollars of coins missing from The Money Vault, was perfectly legitimate and in accordance with lawful procedures sanctioned by this Court.

(5) The Arresting Officer's Failure to Obtain a Search Warrant When It Would Have Been Possible, but Particularly Burdensome, to Do So Did Not Invalidate the Impeccable Search

The present case affords a graphic illustration of the inadequacy and inflexibility of the short-lived rule of *Trupiano v. United States,* 334 U.S. 699 (1948), disavowed in *United States v. Rabinowitz,* 339 U.S. 56 (1950), that failure to obtain a search warrant when it would have been practicable to do so will invalidate a *perfectly lawful* search. Respondent submits that re-adoption of the *Trupiano* rule is not required by the Constitution and is undesirable from the standpoint of sound judicial policy. However, as will be shown below, the present search would pass muster even under the stringent *Trupiano* rule, if the "practicability" requirement were given an interpretation consistent with this Court's stated concern with "the practical demands of effective criminal investigation and law enforcement." *Elkins v. United States,* 364 U.S. 206, 222 (1960).

It is petitioner's position, stated at page 29 of his Opening Brief, that "the failure of the officer to antecedently justify either the arrest or search is reason, standing alone, for reversal under this Court's cases," in the absence of exigent circumstances rendering it impossible to obtain a warrant.

Admittedly the record in the present case indicates an absence of exigent circumstances in that Officer Del Coma was not presented with any *emergency situation* such as immediate threat of evidence being destroyed, secreted, or otherwise disposed of; there was no likelihood of flight by petitioner, and petitioner presented

no particular danger to the officer. However, there were *other* circumstances in light of which it would have imposed an unreasonable burden on Officer Del Coma in terms of time and effort to condition his right to recover the stolen coins upon the obtaining of a search warrant. These difficulties were such as to eliminate as a *practical* possibility the obtaining of a search warrant.

It must be recalled, as indicative of the good faith of Officer Del Coma, that he submitted numerous reports to Deputy District Attorney Robert Law, had several conversations with him, and complied with Mr. Law's suggestion that the officer obtain additional evidence before seeking the issuance of a warrant for petitioner's arrest. (R. 378-82.) On appeal the California Supreme Court held the warrant to be defective because the complaint upon which it issued was deemed to contain inadequate factual averments. Significantly, the complaint was typical of complaints used in California up to that time, and in invalidating this type of complaint by its decision in the present case and a companion case, the California Supreme Court reinterpreted California Penal Code sections 806, 813, and 952 in light of recent decisions of this Court and thereby changed the law upon which Officer Del Coma and other law enforcement officers had relied for many years.

People v. Sesslin, 68 Cal. 2d 418, 425-26 (1968) [439 P.2d 321, 326-27] (R. 407-09);

People v. Chimel, 68 Cal.2d 436, 440 (1968) [439 P.2d 333, 335] (R. 421.)

Furthermore, on cross-examination by petitioner's counsel, Officer Del Coma testified, "Whenever pos-

sible I attempt to secure a Warrant prior to making an arrest; if the matter of investigation proceeds along the lines that I didn't have time to get one, I will proceed on reasonable cause." (R. 229.)

Initially it must be noted that in conducting the search as an incident of the September 13, 1965, arrest of petitioner, Officer Del Coma was entitled to rely upon the rule of many years' standing that "searches turn upon the reasonableness under all the circumstances and not upon the practicability of procuring a search warrant, for the warrant is not required." *United States v. Rabinowitz,* 339 U.S. 56, 65-66 (1950), cited to this effect with approval in *Cooper v. California,* 386 U.S. 58, 62 (1967), and *Ker v. California,* 374 U.S. 23, 41 (1963). *See also Terry v. Ohio,* 392 U.S. 1, 19 (1968).

Secondly, it is essential to examine the circumstances confronting Officer Del Coma when he signed under oath the complaint upon which a judge of the Municipal Court issued the warrant for petitioner's arrest. Officer Del Coma had taken the trouble to obtain an arrest warrant—not because he thought that he "needed" it, but merely out of a commendable preference on his part for this mode of procedure. (R. 229.) Why then did Officer Del Coma not simultaneously execute an affidavit upon which a search warrant could issue under California Penal Code sections 1523-29?

The record indicates that Officer Del Coma had sufficient information to obtain a search warrant.

Petitioner concedes at page 28 of his Opening Brief, as he must, that the officer had probable cause to believe that petitioner had committed the burglary of The Money Vault; the facts known to the officer prior

to September 13, 1965, included petitioner's participation in the negotiations for return of the stolen coins and petitioner's significant admissions to the officer, as well as to Mr. Slocum, Mr. Ambrose, and Mr. Parsons prior to and subsequent to the burglary of The Money Vault.

The information known to Officer Del Coma clearly indicated the likelihood that the stolen coins were at petitioner's residence: (1) petitioner had, by his own admissions, established his identity as the person who had broken into The Money Vault and stolen the coins; (2) petitioner was known to be a coin collector (R. 97, 104, 191, 196, 230); (3) it is common knowledge that coin collectors almost invariably keep their collection at home; (4) furthermore, it was known that petitioner was a dental technician and that he was not self-employed (R. 235-36, 239); hence it was highly unlikely that petitioner would keep the bulky fruits of The Money Vault burglary at his place of employment; (5) between two and three weeks after the burglary, petitioner participated in negotiations in which he "discussed the possibility of returning the coins from the burglary for a civil release," thereby indicating the likelihood that the coins were still in his possession. (R. 264.)

A search warrant could properly have issued ordering the seizure, at petitioner's residence, of the particular coins stolen from The Money Vault, since a search warrant may issue "so long as 'there was substantial basis for [the magistrate] to conclude that [the stolen goods] were probably present.'" *Aguilar v. Texas*, 378 U.S. 108, 111 (1964), quoting from *Jones v. United States*, 362 U.S. 257, 271 (1960).

See also Camara v. Municipal Court, 387 U.S. 523, 535 (1967). The standard is not limited to those situations where either the officer or his source of information has actually viewed the contraband or stolen goods on the premises to be searched.

See United States v. Jennings, 235 F. Supp. 551, 552-53 (D.D.C. 1964), *cert. denied,* 384 U.S. 943 (1966);

United States v. Egorov, 222 F. Supp. 862, 865-67 (E.D. N.Y. 1963).

In evaluating the facts known to Officer Del Coma together with the inferences which he could logically and reasonably deduce therefrom, it is apparent that everything pointed to the likelihood of the stolen coins being at petitioner's residence and nothing suggested their being any place else. "In dealing with probable cause . . . as the very name implies, we deal with probabilities. These are not technical; they are *the factual and practical considerations of everyday life* on which reasonable and prudent men, not legal technicians, act." (Emphasis added.) *Brinegar v. United States,* 338 U.S. 160, 175 (1949). *See also Spinelli v. United States,* 89 S. Ct. 584, 590-91 (1969).

The likelihood that the coins were at petitioner's residence at the time of his arrest also gave the arresting officer probable cause to believe that petitioner was committing in his presence the felony of concealing and withholding stolen property. Cal. Penal Code § 496.

The recent case of *People v. Alvarado,* 255 Cal. App. 2d 285, 290-91 (1967) [62 Cal. Rptr. 891, 894-95], illustrates that the California courts, properly, would have issued a search warrant to search petition-

er's residence for the fruits of The Money Vault burglary upon an affidavit setting forth the foregoing information known to Officer Del Coma. *Alvarado* upheld the issuance of a search warrant authorizing a search of residences of two defendants who were being held in custody for robbery, upon an affidavit describing the robbery, the fact that one or more weapons used in the course of the robbery were missing at the time of the arrest shortly after the robbery, and that there was enough time for the two suspects to have gone to their respective residences between the time of the robbery and the time of arrest.

In the present case, as in *Alvarado,* there was no *direct* evidence of the missing items being at the place to be searched, but the circumstances pointed even more compellingly to the residence as the probable location of the items sought.

Possible as it thus would have been for Officer Del Coma to obtain a search warrant, the peculiar circumstances of the present case presented problems which would have rendered it highly impractical to do so. These considerations loom significant in evaluating a search under the reasonableness standard. *Camara v. Municipal Court,* 387 U.S. 523, 533, 539 (1967).

As will appear from the following circumstances, the time and effort required to draw up an adequate search warrant affidavit in the present case would have been enormous. (Also the date of the search might have been considerably delayed, although time was not clearly of the essence here.)

On the date of The Money Vault burglary, Mr. Slocum had between twenty thousand and thirty thousand individual coins in the shop for sale. (R. 112.)

He was unable to state the exact number of coins that was missing after the burglary, but approximately one-third, or 6,600 to 10,000 coins, were taken. (R. 133, 145-46.) The theft reduced his inventory from a wholesale numismatic value of $23,000 to somewhere between $2,000 and $3,000. (R. 96-97, 133, 146-47.) Sometime during the first two weeks of September, 1965, an unspecified number of the missing coins was retrieved from attorney Jones' office by the police. During this period Officer Del Coma also received information from Hamburger regarding what petitioner had proposed to do with his own portion of the coins. (R. 268-69, 271.)

From the fact that the return of the coins retrieved in attorney Jones' office necessitated only what was described as "a couple of changes in the list" of missing coins prepared by Mr. Slocum for the insurance company (R. 153), it is apparent that the bulk of the coins stolen from The Money Vault was still believed secreted at petitioner's residence.

Would it have been sufficient for Officer Del Coma in drawing up an affidavit in support of a search warrant to describe the property to be seized simply as "*certain coins and coin paraphernalia* taken from The Money Vault during the burglary which occurred on the night of August 14, 1965"? In view of this Court's decisions interpreting the Fourth Amendment, the answer is unequivocally no.

The Fourth Amendment requires that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and *particularly describing* the . . . things to be seized."

More than thirty years ago it was settled that:

> "The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."
>
> *Marron v. United States*, 275 U.S. 192, 196 (1927).

Thus in *Marron* this Court held that a search warrant authorizing the seizure of "intoxicating liquor and articles for their manufacture" did not permit the officers to take a ledger and certain bills into their possession, since the latter items were not specifically mentioned in the warrant. *Supra* at 193-94, 198. Significantly, however, the Court upheld the seizure of the ledger and bills, which were found inside a closet, on the ground that the officers had probable cause to arrest the defendant on the premises and therefore the "right without a warrant contemporaneously to search the place in order to find and seize the things used to carry on the criminal enterprise." *Supra* at 199.[23]

Only a few months prior to the present search this Court, in a unanimous opinion in *Stanford v. Texas*,

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[23] *See also James v. United States*, 191 F.2d 472, 473-74 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 948 (1952), where the defendants challenged the reception in evidence of certain unusual coins because the coins were not described in the search warrant. The court held, "We need not stop to consider the point because, during the search incident to the arrest, the officers lawfully seized the coins as fruits of crime, regardless of whether the search warrant, standing alone, would have justified the seizure."

379 U.S. 476, 485-86 (1965), quoted the foregoing language from the *Marron* opinion and again gave an exacting interpretation of the Fourth Amendment's requirement that items to be seized be particularly described, although the Court's holding was impelled by the fact that much of the property to be seized was literary material. The description which was held inadequate listed "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas."

The requirement of a search warrant description sufficiently detailed to distinguish the items to be seized from other items of the same general character not subject to seizure[24] would have been particularly demanding in the present case since petitioner was known to be a coin collector (R. 97, 104, 191, 196, 230) and presumably, therefore, to have his own collection on the premises. The thousands of missing coins to be seized would have had to be described, in many instances individually rather than by container, with sufficient particularity to distinguish them from other numismatic items, perhaps of the same type and denomination, which might be found in petitioner's own collection on the premises.[25]

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[24]In the case of non-contraband property, a "rule of thumb is: The description must be definitive enough to enable the seizing officer to distinguish the property, or class of property, to be seized from like property which may be found on the premises." R. Davis, Federal Searches and Seizures 72 (1964).

[25]More particularlity of description is required of stolen property to be seized than of contraband, such as illegally possessed liquor, to which no possessory interest can be held. *Cf. Steele v. United States, No. 1*, 267 U.S. 498, 504 (1925). "In warrants for search and seizure of stolen goods particularity of description is necessary to the protection of the citizen from the seizure of

(This footnote is continued on the next page)

Furthermore, Officer Del Coma would have had to recite in his affidavit *the basis* for his belief that the particular specimens to be seized at petitioner's residence were coins stolen from The Money Vault rather than other specimens of what, for the most part, appeared to be fungible items. It would probably not have been enough in this regard for Officer Del Coma simply to recite that Mr. Slocum had imparted this belief to him. It probably would have been essential for Officer Del Coma to set forth individually the specific characteristics of the coins to be seized such as whether particular coins were in mint condition or, alternatively, marked by having been in circulation, and if so, in what manner and to what degree. An adequate description might also have necessitated identifying individual coins with particular coin folders, tubes, and other containers.

Finally, the inadequacy in the present case of the search warrant procedure is compounded by the fact that, because of the interchangeable nature of coins, it is usually difficult if not impossible to distinguish one specimen from another of the same denomination and condition but that identification of an *aggregate* of coins becomes easy by virtue of the unlikelihood of the same combination or collection of diverse coins being found in possession of another collector.[26]

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other goods of the same general character, his lawful property." *Elrod v. Moss*, 278 F. 123, 129 (4th Cir. 1921). Officers are advised that if the property to be seized "is *non-contraband* then you must very carefully identify and describe it." (Emphasis by the author.) United States Department of Justice, *Handbook on the Law of Search and Seizure* 3 (1967).

[26]As Mrs. Pulati testified, "a roll of nickels is just a roll of nickels unless it had my name on it" (R. 287) or was identifiable by virtue of its packaging, etc. (R. 272-76, 286.) But if,

In the present case it would have been very difficult to reflect in a search warrant affidavit this intangible element in the process of identification. *Where a search warrant is used,* "[a]s to what is to be taken, nothing is left to the discretion of the officer executing the warrant." *Marron v. United States,* 275 U.S. 192, 196 (1927). Yet, despite the "traditional failure to recognize the existence and importance of police discretion," W. LaFave, Arrest: The Decision to Take a Suspect Into Custody 64 (1965), the present situation illustrates graphically the need for recognition of limited police discretion in effecting arrests and searches and seizures.

It is apparent that the obtaining of a valid warrant to search for and seize the coins in question would have been an extremely difficult task in light of the California courts' interpretation of the constitutional requirement that property to be seized be described with particularity. In *Aday v. Superior Court,* 55 Cal. 2d 789, 795-96 (1961) [362 P.2d 47, 51], the California Supreme Court had occasion to interpret the mandate of probable cause and particularity of description for search warrants, contained in Article I, section 19, of the California Constitution (which repeats the Fourth Amendment almost verbatim) and in California Penal Code sections 1525 and 1529. In a unanimous opinion the court upheld the warrant's description, by title, of

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for example, quantities of 2¢ and 20¢ pieces are found in combination with quantities of Mercury dimes, Indian head nickels, Peace dollars, and a complete 71-coin set of uncirculated Jefferson nickels (*see* App. B to Resp. Br.) and such items had comprised the entire collection that had been stolen, the inference would be extremely strong that the coins retrieved were the stolen specimens and that both persons had not by chance duplicated exactly their respective collections, even if the particular coins involved were common denominations.

two novels alleged to be obscene but held that the eighteen other categories of described property (which included such non-literary items as checks, sales records, customers' orders, vouchers, ledgers, stockholder records, etc.) did not meet the constitutional standard of specificity.

The issue whether the absence of a valid warrant rendered the present search unlawful is treated in Petitioner's Opening Brief as if it were a question dependent upon legal abstractions instead of upon the factual setting of the particular search.

At page 21 *et seq.* of his Opening Brief, petitioner has attempted to reconcile this Court's decisions dealing with the extent to which a search may properly be made without a warrant following a lawful arrest, a courageous act on petitioner's part in the face of the conclusion of Justice Frankfurter, writing for the Court in *Abel v. United States,* 362 U.S. 217, 235 (1960), that the "several cases on this subject in this Court cannot be satisfactorily reconciled. The problem has, as is well known, provoked strong and fluctuating differences of view on the Court." Petitioner's attempted reconciliation of the cited cases, which include both *Trupiano v. United States,* 334 U.S. 699 (1948), and *United States v. Rabinowitz,* 339 U.S. 56 (1950), overruling *Trupiano,* leads him to the conclusion that no search will be approved for which a search warrant could not have been obtained. (Pet. Op. Br. pp. 7, 26.)

Petitioner seems to suggest that the search incident to his arrest stands on weaker ground because the State courts found the arrest warrant defective, upholding the arrest on the basis of probable cause apart from

the warrant. (Pet. Op. Br. p. 29.) This contention flies in the face of the well-settled rule that the validity of a search incident to an arrest does not depend upon the arrest being under authority of an arrest warrant. *Ker v. California,* 374 U.S. 23, 41 (1963), and cases there cited. *See also Abel v. United States,* 362 U.S. 217, 236 (1960); *Trupiano v. United States,* 334 U.S. 699, 705 (1948). There does not seem to be any meaningful basis for distinguishing in this regard between searches incident to these two types of arrest, since probable cause to arrest without a warrant and probable cause upon which an arrest warrant may issue are both concerned with something apart from what is required to obtain a search warrant—probable cause to believe that the specified property is on the premises to be searched. (*See* Pet. Op. Br. p. 15.) Furthermore, a search warrant's effectiveness of course does not hinge upon the presence of the suspect. Significantly "*at least as much* is required to support a search without a warrant" as is required for the issuance of a search warrant. (Emphasis added.) *Recznik v. City of Lorain,* 89 S.Ct. 342, 345; 21 L. Ed. 2d 317, 321 (1968). *See also Beck v. Ohio,* 379 U.S. 89, 96 (1964); *Aguilar v. Texas,* 378 U.S. 108, 111 (1964).

Petitioner does not squarely confront the question, what if any considerations of policy of a constitutional magnitude support a flat rule that would invalidate an otherwise lawful search, conducted incident to a concededly lawful arrest, solely because of the arresting officer's failure to obtain a search warrant. The fundamental and unavoidable issue, unless petitioner is seeking "to force resort to an arid ritual of meaningless form," *Henry v. Mississippi,* 379 U.S. 443, 449

(1965), is this. The lawful arrest of petitioner and "seizure" of his person was certainly as basic an invasion of his privacy as can be imagined. Was the slight addition to the invasion of his privacy, occasioned by the fact that the search to recover the stolen property was effected as an incident to the concededly valid arrest instead of by means of a search warrant, such as to outweigh the State's interest in protecting its citizens from crime by means which are not unreasonably burdensome, as would be a requirement that in all cases, including such as the present one, a search warrant necessarily be obtained?[27]

It is not enough nonchalantly to suggest that a search warrant must be obtained in all but emergency situations without considering the practical consequences. Any protection of the rights of the individual advanced by such a new rule must indeed be substantial to outweigh the burden which such a rule would add to the already difficult task of combatting crime. Burglary, the crime involved in the present case, continues to be the most frequently occurring major crime nationwide and is increasing at an alarming rate far in excess of the nation's increase in population.[28] Only one in five cases

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[27]"The justices who voted for the Harris and Rabinowitz decisions argued, in effect, that when privacy has already been invaded by a policeman who is on the premises legitimately, to make an arrest, the accompanying search is, at worst, only a minor additional invasion of privacy. . . ." J. Landynski, Search and Seizure in the Supreme Court 114 (1966). *See also Trupiano v. United States,* 334 U.S. 699, 714 (1948) (dissenting opinion of Chief Justice Vinson.)

[28]In 1967, the last year for which complete statistics are available, 1,605,700 reported burglaries occurred. This represented a 14.6% increase over the rate of the preceding year per 100,000 inhabitants, and a 62.1% increase over the rate of 1960 per 100,000 inhabitants. Federal Bureau of Investigation, Uniform Crime Reports 5 (1967).

of burglary is solved,[29] and *most significantly in 1967 only 8%-14% of the property stolen* (depending on the category of property and excluding locally stolen automobiles) *was recovered.* The economic loss suffered from burglaries in 1967 was in excess of $438,000,000, the average burglary loss being $273.[30]

The time and effort required of law enforcement officers, district attorneys' offices, and magistrates in obtaining and issuing a search warrant is much greater than in the case of an arrest warrant. One commentator has stated that *under ideal conditions* it takes two hours to obtain a search warrant.[31] Certainly resort to the warrant procedure should be encouraged, but are its benefits such, compared with the generally adequate judicial control of search and seizure when its product is subsequently offered into evidence, as to merit the

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[29]F.B.I. Reports, *supra* at 22. Of those arrested, seven out of ten are formally charged and of those charged only 29% are freed through acquittal or dismissal of the charges. *Supra* at 22.

[30]F.B.I. Reports, *supra* at 22, 111.

[31]Collings, *Toward Workable Rules of Search and Seizure—An Amicus Curiae Brief,* 50 Calif. L. Rev. 421, 446-47. (1962). This circumstance merits consideration in light of the vast number of searches which law enforcement officers have to carry out every day in the performance of their duties. Apparently statistics covering the number of searches conducted are not available, but the number of arrests for serious *property* crimes casts some light on the scope of the problem. In California alone there were 27,717 burglary arrests in 1967 (and 265,780 reported burglaries committed). California Department of Justice, Crime and Delinquency in California 70, 281 (1967). Nationwide there were 239,461 burglary arrests in 1967 (and 1,605,700 reported burglaries committed); there were also 447,299 arrests for larceny involving $50 or more (and 1,047,100 reported instances of such larceny committed). F.B.I. Reports, *supra* at 5, 116. Officer Del Coma himself had a monthly caseload of forty-five to eighty City of Orange burglaries in addition to his work on burglaries committed in other jurisdictions in Orange County. (R. 241-42.)

blanket requirement of a search warrant absent the presence of emergency conditions?

Some commentators have discovered a wide gulf between the ideal of the warrant procedure and the practice that actually exists. Affidavits upon which search warrants are issued often receive very little consideration by the magistrate, especially compared with the consideration given in a subsequesnt trial or other adversary proceeding at which the admissibility of the evidence obtained is contested. There is a very large disparity among magistrates as to the amount of evidence required to obtain a search warrant, and sometimes the same judge who issued the warrant will in a later proceeding declare it invalid. In some localities the role of the magistrate is perfunctory, and he places great reliance on the conclusion of the police affiant or the deputy prosecutor signing the complaint. There are also instances of warrants being issued partly in blank. L. Tiffany, D. McIntyre, Jr., and D. Rotenberg, Detection of Crime 115, 201, 204 (1967). *See also* W. LaFave, Arrest: The Decision to Take a Suspect Into Custody 15-16, 502-04 (1965).

One commentator notes:

> "Magistrates, particularly in rural areas, often have no training in the law at all, while in urban areas they frequently handle their responsibilities in an extremely lackadaisical fashion. If warrants are to be used by the police more often than in the past, magistrates will have to be available on an around-the-clock basis, and they will need some knowledge of search law. *Warrants that are issued on a pro forma basis are no more protective of the right to privacy than was the general warrant,* yet

abundant evidence exists that many overworked (and sometimes underworked) judges do not scrutinize warrant requests. They either sign without question or else delegate the warrant-issuing function to a clerk. Even on the federal level we do not know whether the warrant requirement is the protection for the citizen which the framers intended it to be. Many, if not most, warrants are issued by United States commissioners, who have standing as judicial officers. One-third of the commissioners were never trained in the law, and Chief Justice Warren has recently expressed his concern about their caliber."

(Footnotes omitted and emphasis added.) J. Landysnki, Search and Seizure and the Supreme Court 194 (1966), citing field studies of the warrant-issuing process.

These studies indicate that the search warrant and the arrest warrant are not the panaceas they are often thought to be and that when they are issued under less than ideal conditions, they afford less protection to the individual than do responsible and restrained enforcement techniques on the part of the police and prosecutors. Since the arresting officer must have just as much, if not more, information to justify a search incident to an arrest than he needs in the case of an application for a search warrant, *Aguilar v. Texas,* 378 U.S. 108, 111 (1964), the rule permitting a search without warrant as an incident to arrest does not always mean that the officer is benefited, and the suspect disadvantaged, by the avoidance of a meaningful safeguard.

That the warrant procedure is less exemplary than it is ideally imagined to be is not to say that it is of little use and should not be encouraged. And there are many incentiyes to obtain a search warrant,[32] so warrants will still be increasingly employed in the absence of a requirement that they be mandatory.[33] However,

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[32]Among these incentives are (1) the presumption of legality attending a search effected by search warrant in many jurisdictions (*see, e.g., Badillo v. Superior Court,* 46 Cal. 2d 269, 272 (1956) [294 P.2d 23, 25], which affects the admissibility of evidence and sometimes insulates the officer from civil or criminal liability for false arrest or trespass, *see Carroll v. United* States, 267 U.S. 132, 156 (1925); *Barrier v. Alexander,* 100 Cal. App. 2d 497, 499-500 (1950) [224 P.2d 436, 438]; 18 U.S.C. § 2236; Cal. Code Civ. Proc. § 262.1; (2) the opportunity for a broader search than might be justifiable as incident to an arrest; (3) the possibility of search in the absence of the suspect and of simultaneous search at different places regardless of the absence of multiple suspects; (4) the favorable impression on the court and the jury attending the use of a search warrant; (5) the possibility of determining the lawfulness of the search in advance; (6) minimizing the chance of an altercation with the suspect or others. *See* L. Tiffany, *et al.,* Detection of Crime, *supra* at 116-19; W. LaFave, Arrests, *supra* at 36-52.

[33]Law enforcement officers will not fail to employ search warrants, or fail to be encouraged to do so by prosecuting attorneys, just because it is not compulsory that warrants be obtained. In United States Department of Justice, Handbook on the Law of Search and Seizure 1-2 (1967), federal, state, and local officers are advised:

> "IMPORTANT: Generally, the courts give the police the benefit of the doubt when they first get a search warrant. So:
>
> 1. If you have time, GET A WARRANT.
> 2. If you are in doubt, GET A WARRANT.
> 3. If you are not going to search or seize immediately in the person's presence, GET A WARRANT.
>
> YOU DON'T NEED A WARRANT:
>
> 1. If your search is incidental to an arrest and you confine the search to an area under the immediate control of the arrestee; or,
> 2. If you search a motor vehicle that may be moved away and you have cause to believe (more than mere suspicion) that the person has committed or is about to commit

these considerations are certainly relevant in evaluating petitioner's claim that failure to resort to the warrant procedure in a non-emergency situation should automatically invalidate an otherwise lawful search.

In light of the foregoing, the undogmatic approach of *Rabinowitz* is even more appropriate—"reasonableness under all the circumstances and not . . . the practicability of procuring a search warrant," and deference to the findings of the trial court, which is in the best position to pass upon such matters because of its opportunity to observe the demeanor of the witnesses. *United States v. Rabinowitz,* 339 U.S. 56, 63, 66 (1950).

The *Rabinowitz* standard is *a fortiori* appropriate in evaluating, under the Fourteenth Amendment, the reasonableness of a search in a *State* prosecution. *Ker v. California,* 374 U.S. 23, 33 (1963). For despite the applicability of the exclusionary rule, *Mapp v. Ohio,*

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a crime and you search for weapons, fruits or instrumentalities of crime or contraband therein; or

3. If exceptional circumstances exist such as the belief (more than mere suspicion) or knowledge that contraband will be destroyed almost immediately *then* you need not have a search warrant *but* you will have a harder time proving the correctness of your actions to the court without it. *So get a warrant where practical."* (Emphasis by the author.)

The Handbook goes on to inform officers that they must have a particular objective in mind and cannot use a search incident to an arrest to make a general, exploratory search to discover evidence; that the intensity of the permissible search depends on the nature and size of the object sought, that maneuvering the arrest to occur on the premises in order to search will invalidate the search, and that a search warrant should be obtained even if the officer intends to make an arrest which would justify a search. *Supra* at 31-36.

In the official publication of the Peace Officers' Association of the State of California, the Chief of the Appellate Division of the Los Angeles District Attorney's office has similarly advised law enforcement officers to employ search warrants when possible. Wood, *We Should Make Greater Use of Search Warrants,* California Peace Officer (May-June, 1962) 27.

367 U.S. 643 (1961); *People v. Cahan,* 44 Cal. 2d 434 (1955) [282 P.2d 905], and this Court's holding that "the standard of reasonableness is the same under the Fourth and Fourteenth Amendments, the demands of our federal system" require a distinction between evidence held inadmissible because of this Court's "supervisory powers over federal courts and that held inadmissible because prohibited by the United States Constitution." *Ker v. California,* 374 U.S. 23, 33 (1963). *See also Chapman v. California,* 386 U.S. 18, 48 (1967) (dissenting opinion of Mr. Justice Harlan.)

In *Ker* eight members of this Court agreed that *Mapp*

> ". . . . established no assumption by this Court of supervisory authority over state courts [citation] and, consequently, it implied no total obliteration of state laws relating to arrests and searches in favor of federal law. . . . Mapp did not attempt the impossible task of laying down a 'fixed formula' for the application in specific cases of the constitutional prohibition against unreasonable searches and seizures; it recognized that we would be 'met with "recurring questions of the reasonableness of searches"' and that, 'at any rate, [r]easonableness is in the first instance for the [trial court] . . . to determine, "'. . . ,' thus indicating that the usual weight be given to findings of trial courts."
>
> *Ker v. California,* 374 U.S. 23, 31-32 (1963).
>
> ". . . . The States are not thereby precluded from developing workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law

> enforcement' in the States, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures . . . . Such a standard implies no derogation of uniformity in applying federal constitutional guarantees but is only a recognition that conditions and circumstances vary just as to investigative and enforcement techniques."
>
> *Ker v. California*, 374 U.S. 23, 34 (1963).

See also:

Sibron v. New York, 392 U.S. 40, 60-61 (1968);

Collings, *Toward Workable Rules of Search and Seizure—An Amicus Curiae Brief*, 50 Calif. L. Rev. 421, 427-30, 458 (1962);

Kaplan, *Search and Seizure: A No-Man's Land in the Criminal Law*, 49 Calif. L. Rev. 474, 503 (1961).

Initially it should be noted that the foregoing principles serve to demonstrate the inapplicability of many of the cases cited in Petitioner's Opening Brief, some of which expressly or impliedly based their ruling regarding the necessity for a search warrant under the circumstances upon this Court's supervisory authority over the federal courts. As California's Chief Justice Roger Traynor has observed, "Opinions written before this distinction assumed its present crucial importance may have to be reinterpreted in the light of 'the demands of our federal system.' (Ker v. California, supra, 374 U.S. at p. 33)." *People v. Thayer*, 63 Cal. 2d 635, 639 (1965) [408 P.2d 108, 110], *cert. denied*, 384 U.S. 908 (1966). Even the discarded "Trupiano rule [was] not a constitutional command, but rather

an evidentiary policy adopted by this Court in the exercise of its supervisory powers over federal courts." *United States v. Rabinowitz,* 339 U.S. 56, 67 (1950) (dissenting opinion of Mr. Justice Black). Secondly, to the extent that certain of those cited cases are based on constitutional grounds, it is apparent from *Ker* that the federal system allows some leeway for reasonable State procedures despite the applicability to the States of the Fourth Amendment's mandate of reasonableness.

As is apparent from the opinion of the California Supreme Court in the present case, *People v. Chimel,* 68 Cal.2d 436, 442-43 (1968) [439 P.2d 333, 337] (R. 424-25), California's basic rule is that of reasonableness under all the circumstances of the case rather than the practicability of obtaining a search warrant — the standard enunciated in *Ker v. California,* 374 U.S. 23, 41 (1963), and *United States v. Rabinowitz,* 339 U.S. 56, 66 (1950). *See also People v. Winston,* 46 Cal. 2d 151, 162-63 (1956) [293 P.2d 40, 46-47]. The decisions of the California courts evince a policy encouraging the increasing use of search warrants. *People v. Keener,* 55 Cal. 2d 714, 723 (1961) [361 P.2d 587, 592]. California law, however, authorizes a peace officer to arrest "without a warrant . . . [w]henever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed." Cal. Penal Code § 836(3). As an incident thereto the officer may conduct a reasonable search.[34] *In re Dixon,* 41 Cal. 2d 756, 761-62 (1953) [264 P.2d 513, 516].

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[34]The recent case of *People v. Hill,* 69 A.C. 568 (1968) [446 P.2d 521], cited in Petitioner's Opening Brief at page 13, footnote 3, does *not,* as petitioner characterizes it, dispense with the

California had already, prior to *Ker's* invitation to do so, developed a comprehensive and workable system of rules governing arrests and searches and seizures designed to balance the individual's constitutional right of privacy with his right to protection from crime. *See* the discussion of these rules in Collings, *Toward Workable Rules of Search and Seizure,* 50 Calif. L. Rev., *supra* at 430-58. It should be noted that in the six years since Professor Collings' analysis, California has accorded criminal suspects even more in the way of procedural safeguards, particularity with respect to the issuance of arrest warrants and the right of the police to make forcible entry.[35] "[T]he California courts . . . have been in the vanguard in the development of individual safeguards in criminal trials . . ." *Chapman v. California,* 386 U.S. 18, 50 (dissenting opinion of Mr. Justice Harlan.)

In view of the varying conditions that exist in the various States in rural, suburban, and metropolitan areas, and the variety of situations that confronts the average law enforcement officer in his everyday efforts to arrive at effective enforcement techniques, Col-

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requirement that the suspect, whose residence is searched as an incident of his arrest, be at home at the time. Rather the opinion recognizes, "When the police have probable cause to arrest one party, and when they reasonably mistake a second party for the first party, then the arrest of the second party is a valid arrest." *Supra* at 572 [446 P.2d at 523]. "[A] search based on a valid but mistaken arrest is not unreasonable as an unwarranted invasion of either the arrestee's or the defendant's privacy." *Supra* at 574 [446 P.2d at 525].

[35] *Compare* Collings, *supra* at 453-55 *with People v. Sesslin,* 68 Cal.2d 418, 422-25 (1968) [439 P.2d 321, 324-26] (R. 403-07); and *compare* Collings, *supra* at 449-50 *with People v. Gastelo,* 67 Cal. 2d 586, 588-89 (1967) [432 P.2d 706, 707-08]; *People v. Rosales,* 68 Cal.2d 299, 302-05 (1968) [437 P.2d 489, 491-93].

lings, *supra* at 427-29, "an arbitrary rule that a warrant must be procured if there is time to get one is completely unworkable. Overextensive use of search warrants would put an impossible burden on our already undermanned law enforcement personnel." Collings, *supra* at 446. A uniform rule is inappropriate to cope with conditions that are diverse and ever-changing. Some of the practical difficulties for peace officers in such a rule are discussed by Professor Collings.[36] *Supra* at 446-47. It can be added that similar burdens would be imposed upon prosecuting attorneys' offices and those members of the judiciary who are called upon to issue warrants. *Cf. See v. City of Seattle*, 387 U.S. 541, 548(n.1) (1967) (dissenting opinion of Mr. Justice Clark).

There is nothing in the most recent decisions of this Court that impugns the present search's validity under sound and settled principles which permit the States to develop workable rules regarding arrest and search within the ambit of the Fourth Amendment's mandate of reasonableness, including rules which allow peace officers under various conditions the right to conduct reasonable searches without a warrant, incident to arrest.

Despite dictum by this Court to the effect that advance judicial approval of searches and seizures through the warrant procedure must be obtained when

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[36]He also notes, "Some commentators seize upon uniformity as a kind of fetish or ideal without any awareness of its mythical quality. They fail to realize that there will be no uniformity even if the Supreme Court does take upon itself the onorous task of attempting to provide it. As long as we have fifty states and maintain a pretense of federalism there will be individual variation." Collings, *supra* at 427-28. Even the decisions of the lower *federal* courts exhibit a lack of uniformity in the area of search and seizure. *See* Collings, *supra* at 435-38.

"practicable," *Terry v. Ohio*, 392 U.S. 1, 20 (1968), the cases there cited by the Court have, if at all, voiced such a restrictive view only where there were exigent circumstances which *did* make it impossible to obtain a search warrant, *Terry v. Ohio, supra* at 20 (crime about to be committed); *Warden v. Hayden*, 387 U.S. 294, 299 (1967) (hot pursuit); where the search conducted was a search upon probable cause without any arrest or at a different time or place than the arrest, *Katz v. United States*, 389 U.S. 347, 357-58 (1967); *Preston v. United States*, 376 U.S. 364, 367-68 (1964); *Chapman v. United States*, 365 U.S. 610, 613, 615 (1961), or where the arrest itself was held invalid because of the absence of probable cause. *Beck v. Ohio*, 379 U.S. 89, 96 (1964). *See also See v. City of Seattle*, 387 U.S. 541, 542-43 (1967) (search without either a warrant or probable cause to arrest); *Camara v. Municipal Court*, 387 U.S. 523, 527-29 (1967) (same); *Schmerber v. California*, 384 U.S. 757, 769-71 (1966) (threatened destruction of evidence and considerations peculiar to intrusions beyond the body's surface). No decision of this Court, other than the short-lived case of *Trupiano v. United States*, 334 U.S. 699, 708 (1948), and its progeny, overruled by *United States v. Rabinowitz*, 339 U.S. 56, 66 (1950), has held invalid a perfectly lawful search incident to an arrest solely on the basis of the arresting officer's failure to obtain a search warrant when it would have been possible for him to do so. *See also* 339 U.S. at 85-86 (dissenting opinion of Justice Frankfurter).

In the companion opinion to *Terry*, *Sibron v. New York*, 392 U.S. 40, 60-61, 66-67 (1968), this Court expressly recognized the right to search incident to a

lawful arrest, pursuant to the State's development of ". . . its own law of search and seizure to meet the needs of local law enforcement . . .," and upheld the search of the person of the defendant Peters. By virtue of the circumstances of the case, particularly the fact that the arrest took place in the hallway of a building where Peters did not reside, the search was limited in area. The scope permitted of such a search was narrow since its purpose was to seize weapons or other things which might be used to assault an officer or effect an escape, and to prevent the destruction of evidence of the crime. *Sibron v. New York, supra* at 67. *See also Warden v. Hayden,* 387 U.S. 294, 299 (1967), and also 387 U.S. at 310-11 (concurring opinion of Mr. Justice Fortas), cited in *Terry v. Ohio,* 392 U.S. 1, 19, 26, 29 (1968).

These recent decisions reinforce the long-standing rule that, *subject to well-defined exceptions,* only where there are exigent circumstances may a search without a warrant be made upon probable cause; that among the exceptions to this rule are searches incident to lawful arrest; and that once this right to search incident to arrest is recognized in the particular case, the principal limitation on the search, under the reasonableness requirement of the Fourth Amendment, is that the scope of the search be consistent with the permissible objective of the search. *Terry v. Ohio,* 392 U.S. 1, 19, 20 (1968); *Gilbert v. California,* 388 U.S. 263, 283-84 (1967) (concurring opinion of Mr. Justice Douglas); *Warden v. Hayden, supra* at 310-12 (concurring opinion of Mr. Justice Fortas). *Cf. Mancusi v. DeForte,* 392 U.S. 364, 370-71 (1968).

Applied to the facts of the present case, these principles justify the search of the two rooms in petitioner's residence where the stolen coins were found, since recovery of the thousands of dollars of coins stolen during the burglary for which petitioner had just been arrested was a permissible objective of the search, and since the search was only as extensive and intensive as was consistent with the fulfillment of this objective.

Had a search warrant been used, there would have been no lesser invasion of petitioner's privacy, *Trupiano v. United States,* 334 U.S. 699, 714 (1948) (dissenting opinion of Chief Justice Vinson), and the same evidence would have been available to use against petitioner at trial. A warrant certainly would have covered the whole house. Even assuming that a warrant would not have authorized seizure of all the particular items recovered in the present search, the officer would have observed the objects which were not then subject to seizure during the course of his lawful execution of the search warrant. If there was probable cause to believe that these unseized objects were connected with The Money Vault burglary (or the Pulati burglary), the officer would have been able to seize these objects by using his newly acquired knowledge to obtain a second search warrant. *See United States v. Harris,* 331 U.S. 145, 172 (1947) (dissenting opinion of Mr. Justice Frankfurter). Thus as a practical matter, at least where the search is for stolen property as here, there is no question of the scope of a lawful search incident to the suspect's arrest at his residence being broader than the scope of the search that would have been permissible under a search warrant.

The problems inherent in the implementation of somewhat vague concepts of constitutional law, such as the "reasonableness" of a search under all the circumstances of the case, must surely invite deviation from the historically sound approach of developing standards through decision on a case-by-case basis. *United States v. Rabinowitz,* 339 U.S. 56, 65 (1950). However, experience has shown that the products of what must at times seem to be a tediously slow process in the evolution of meaningful guidelines have fared far better than rigid and mechanical formulae which, because they tend to create more problems than they solve, are sometimes destined for a short life. *See Trupiano v. United States,* 334 U.S. 699, 708 (1948), overruled by *United States v. Rabinowitz, supra* at 66. Determination of the limits of proper search can best be effected, "as . . . in the past, on a case-by-case basis under the general Fourth Amendment standard of reasonableness," *See v. City of Seattle,* 387 U.S. 541, 546 (1967), rather than by attempting "the impossible task of laying down a 'fixed formula' for the application in specific cases of the constitutional prohibition against unreasonable searches and seizures."[37] *Ker v. Cali-*

[37]"Defendant insists that to sanction the issuance of warrants of arrest on allegations which do not satisfy the requirements for issuance of a search warrant, is to invite misuse of such warrants of arrest to by-pass the requirements of a search warrant. The answer to this contention, at least until other remedies fail (cf. People v. Cahan (1955) 44 Cal.2d 434, 445 [282 P.2d 905, 5 A.L.R. 2d 513]), is to strike down those arrests where there has been a misuse of process, or issuance and use of process for one offense as a subterfuge to secure evidence of another. (See People v. Ghimenti (1965) 232 Cal.App.2d 76, 81 [42 Cal.Rptr. 504].) . . ." *People v. Chrisman,* 256 Cal. App. 2d 425, 447 (1967) [64 Cal. Rptr. 733, 748) (hearing denied by the California Supreme Court.)

fornia, 374 U.S. 23, 31-32 (1963). *See also Abel v. United States,* 362 U.S. 217, 240 (1960). "Thus it would seem difficult to conclude that the vice of vagueness is a sufficient reason for discarding a formulation of reasonableness under all the circumstances; a certain amount of such vagueness is rather of the essence of a constitutional principle." Leagre, *The Fourth Amendment and the Law of Arrest,* 54 J. Crim. L.C. & P. S. 393, 420 (1963).

As they become needed, guidelines as to what is a reasonable search under particular circumstances can best be formulated, in light of current federal and state court decisions, on a case-by-case basis as in the past, the validity of these standards being determined by eventual judicial review of the cases applying the standards. This pragmatic approach to the establishment of standards recognizes that the exclusionary rule is the most effective means of securing compliance with the mandate of the Fourth Amendment,[38] *Mapp v. Ohio,* 367

[38]California affords the accused an abundance of opportunities to test the reasonableness of an arrest or search under the exclusionary rule and thereby guarantees him that, through cross-examination of the arresting officer, he can probe whether probable cause really existed prior to the arrest and search. Habeas corpus is available at any time prior to or subsequent to trial (Cal. Penal Code § 1473), and the issue of search and seizure may also be litigated at the preliminary hearing (Cal. Penal Code § 738), upon motion to set aside the information or indictment (Cal. Penal Code § 995), at the newly available hearing on motion for return of property or suppression as evidence (Cal. Penal Code § 1538.5), by writ of mandamus or prohibition (Cal. Penal Code §§ 999a, 1538.5(i)), at trial, on appeal to the intermediate Court of Appeal or Superior Court (Cal. Penal Code §§ 1237, 1466), and on petition for hearing to the California Supreme Court (Cal. Rules of Court, Rule 29).

Federal and State law, including that of California, also provides for civil and criminal liability for illegal search and seizure

(This footnote is continued on the next page)

U.S. 643, 651-53, 655-56 (1961), and, unlike attempts to place unknown future cases into molds of the present, would be consistent with this Court's well-settled practice "not to formulate a rule of constitutional law broader than is required by the precise facts presented in the record." *Garner v. Louisiana,* 368 U.S. 157, 163 (1961).

II

EVEN IF IT IS ASSUMED THAT THE SEARCH WAS UNLAWFUL AND ITS FRUITS IMPROPERLY RECEIVED IN EVIDENCE, SUCH ERROR WOULD CLEARLY BE HARMLESS BEYOND A REASONABLE DOUBT

This Court has recognized that not all error of a constitutional nature requires reversal of the judgment of conviction. *Chapman v. California,* 386 U.S. 18, 24 (1967), establishes that "a federal constitutional error can be held harmless" where the Court is able "to declare a belief that it was harmless beyond a reasonable doubt."

It is respondent's position that the search of petitioner's residence was perfectly lawful in all respects, but that even if error is assumed, such error clearly was harmless under the foregoing standard.

After a jury trial petitioner was found guilty as to both the charge of the Pulati burglary (Count I) and the charge of The Money Vault burglary (Count III). (R. 1-2, 23-26.) Petitioner was sentenced to state

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under various circumstances and with varying degrees of effectiveness. *See Mapp v. Ohio,* 367 U.S. 643, 652 (n. 7) (1961); Kaplan, *Search and Seizure: A No-Man's Land in the Criminal Law,* 49 Calif. L. Rev. 474, 486-87 (1961). The continued significance of these other remedies was recently recognized by this Court in *Terry v. Ohio,* 392 U.S. 1, 15 (1968.)

prison on both counts, the sentences to run concurrently. (R. 35, 37.)

Inasmuch as some of the evidence, whose seizure and reception in evidence is presently contested, was identified as the fruits of the Pulati burglary and *none* of that evidence was identified as having any connection with The Money Vault burglary, *see People v. Chimel*, 68 Cal. 2d 436, 440 (1968) [439 P.2d 333, 335] (R. 421), consideration of the applicability of the harmless error rule demands that the effect of any assumed error be separately weighed as to each of the two findings of guilt.

A. Count I: In View of the Abundant Circumstantial Evidence of Petitioner's Guilt of the Pulati Burglary, the Reception in Evidence of Coins Recovered During the Search Did Not Bring About a Verdict Which Would Not Otherwise Have Resulted

The following evidence clearly established, beyond a reasonable doubt, that petitioner committed the burglary of the Pulatis' home and that the reception of evidence establishing that some of the Pulatis' coins were found at petitioner's residence during the September 13, 1965, search did not bring about a verdict which would not otherwise have resulted:

1. The night of the burglary marked the one night that petitioner had missed a monthly meeting of one of the three coin clubs in which he and the Pulatis were concurrent members during the preceding period of approximately one-half year. (R. 41-42, 44, 48, 60, 63.)

2. During the three months preceding the burglary, petitioner had visited the Pulatis at their home on a

regular basis. Petitioner lived in the neighborhood and would often drop by to discuss coins and buy and sell a few coins. During this period the Pulatis were engaged in re-inventorying and repackaging their collection of coins, and petitioner was often present while the Pulatis were so occupied. When on occasion petitioner expressed an interest in purchasing certain coins, the Pulatis brought them out for him to examine. (R. 42-43.)

3. Petitioner was one of only two persons in Santa Ana who knew that the Pulatis kept coins in their home. The other person who knew was the man who had sold the Pulatis their house; they were new in the area and did not yet know many people. (R. 60.) Petitioner was the only member of any of the three coin clubs, of which the Pulatis were members, who had been to their home. (R. 61.)

4. The Pulati home was not ransacked on the night of the burglary. Certain medals and silver dollars were in open sight on the coffee table and in the dining room; the sterling silver was not moved from the dining room, and Mrs. Pulati's diamond watch was still lying on the dresser in the bedroom. (R. 45-46, 70-71.) Two large drawers, several containers, and a strong box, all containing coins, were missing. These items had been located in the den, the room from which Mr. Pulati in the past had fetched coins to show to petitioner. (R. 46, 50-51, 56, 62, 69-70.)

The burglar was obviously someone who was interested exclusively in unusual coins and who knew the premises well and that coins were kept there. Petitioner was the only person who could possibly fit these specifications.

5. The first time petitioner observed Mrs. Pulati working on a book of coins at her home, he said; " 'You have all these coins around the house. You must have insurance.' " She replied that she and her husband did have insurance. (R. 43.)

6. A somewhat unusual coin wallet had been taken from the Pulati residence during the burglary. Mrs. Pulati had never seen one in anyone else's possession. The company that had made it had gone out of business. Two or three months after the burglary, Mrs. Pulati observed petitioner using such a coin wallet. She had never seen him use one prior to the burglary. (R. 284.)

7. At the trial, before which petitioner had pleaded guilty to the burglary of the Pulati home but subsequently had changed his plea to not guilty (R. 4-6), he took the stand in his own defense and gave a highly unbelievable account of how he had not burglarized the Pulatis' home but instead had purchased their coins and medals from an unknown person (although petitioner did not collect medals) without knowledge that they were in fact stolen. He also contradicted himself in his testimony regarding his acquisition of the red coin wallet. Petitioner's story was, if anything, probative evidence of petitioner's consciousness of guilt. (R. 334, 340-42, 354, 364-65, 367, 388; *see also* R. 21-22.)

In view of the trial court's proper instructions on the rule of reasonable doubt and its relation to circumstantial evidence, and on admissions (R. 16-20), it is clear beyond a reasonable doubt that the recovery of some of the stolen coins at petitioner's residence was not responsible for the guilty verdict on Count I and that any error would have been harmless beyond a reasonable doubt.

B. Count III: Since None of the Coins Recovered During the Search Were Identified as From The Money Vault Burglary, the Search Could Not Possibly Have Prejudiced Petitioner; Moreover, Petitioner's Guilt of the Burglary of The Money Vault Was Indisputably Established by Other Evidence, in Particular His Extrajudicial Statements to Civilian Witnessses Admitting the Burglary

Initially it must be noted that since none of the property seized during the search of petitioner's residence was identified as being among the items taken during the burglary of The Money Vault, *People v. Chimel,* 68 Cal. 2d 436, 440 (1968) [439 P.2d 333, 335] (R. 421), it is inconceivable that the search and the reception of its fruits in evidence could have prejudiced petitioner.

This is particularly so in view of the fact that petitioner made the following admissions, and "this Court has always viewed evidence out of a defendant's own mouth, obtained after the events, as particularly weighty with the jury. See Bram v. United States, 168 U.S. 532 (1897); Jackson v. Denno, 378 U.S. 368 (1964)." *Miller v. California,* 392 U.S. 616, 629 (1968) (dissenting opinion of Mr. Justice Marshall).

1. Prior to the burglary petitioner told Mr. Slocum, the owner of The Money Vault, that he (petitioner) was going to "knock over" a collection and make $50,000 or $100,000. (R. 97-99, 103.) Petitioner inquired as to the type of alarm system and amount of insurance carried by Mr. Slocum and asked him how he would like to have his coin shop "knocked off." (R. 103.)

2. Petitioner was one of two persons, other than Mr. and Mrs. Slocum and the sister-in-law of Mr. Slocum, who had been aware of the concealed location of the most valuable coins in The Money Vault. (R. 103-04, 182-83.) After the burglary coins from this location were missing, although other coins were left behind. (R. 89, 91, 94-95, 152.)

3. On the day preceding the burglary petitioner came into the store, was "just sitting there, looking around," did not buy anything, and remained quite a while. (R. 170-71.)

4. A few days after the burglary petitioner telephoned Mr. Slocum and told him that he (petitioner) had heard that Mr. Slocum had had The Money Vault "knocked over." After Mr. Slocum's denial, petitioner said he had heard that the job had been "real professional." (R. 105-06.)

5. On the night of the burglary petitioner told his neighbor, Thomas Ambrose, that he had a "big deal cooking" that evening, that he and another party named Chuck (whom he then attempted to contact by Walkie-Talkie) "were going to knock over" a coin shop, and that $60,000 might be involved. (R. 186-88.) On the following day petitioner admitted breaking partly[39] into the coin shop but later in the day said that this was a "phony story." (R. 188-89.) Two weeks earlier petitioner had attempted to sell Mr. Ambrose a quantity

[39]Petitioner's statements to Mr. Ambrose admitting breaking through the wall of the coin shop with intent to commit theft constituted a complete admission of the felony of burglary under California law even if petitioner *had* backed out without completely entering the premises or taking anything. *People v. Failla*, 64 Cal. 2d 560, 569 (1966) [414 P.2d 39, 45]; *People v. Jones*, 244 Cal. App. 2d 378, 380-81 (1966) [52 Cal. Rptr. 924, 925-26] (hearing denied by the California Supreme Court.)

of typewriters described by petitioner as "Hotter than a $3 bill." (R. 190-91.) During the pendency of the trial petitioner told Mr. Ambrose that Ambrose was "the only one that could shoot him down on this thing." (R. 193.)

6. During the August 25, 1965, conversation between petitioner and Officer Del Coma, petitioner discussed the possibility of the coins being returned. (R. 258.) Five days later petitioner, Chuck Hamburger, and attorney Jones discussed the same matter with the officer. (R. 260-61, 264.) Petitioner also stated that Mr. Slocum was claiming the loss of items which had not been taken. (R. 264-65, 266.) A week later petitioner told Mr. Slocum, " 'Did you ever think someone was trying to help you instead of hurt you by not cleaning you out completely?' " (R. 107.)

7. Thereafter petitioner informed Mr, Parsons of his (petitioner's) involvement in The Money Vault burglary and admitted possessing the stolen coins. Petitioner also said that some typewriters were "involved with the same thing." (R. 195-97, 230.)

8. Three months after the burglary, petitioner sold a readily identifiable coin from The Money Vault burglary to Mr. Shapiro. (R. 97, 108-11, 160-62, 306-07.)

Despite petitioner's characterization of the argument as facetious (Pet. Op. Br. p. 31), it is clear from the foregoing that even if the search of petitioner's residence is assumed to have been unlawful, the reception in evidence of the fruits of the search was harmless beyond a reasonable doubt both as to the Pulati burglary count and The Money Vault burglary count. *Chapman v. California*, 386 U.S. 18, 24 (1967).

Conclusion

The search of petitioner's residence for the fruits of The Money Vault burglary for which petitioner had just been arrested was reasonable as incident to a concededly lawful arrest; the scope of the search properly extended to the two rooms where the stolen coins were found since these rooms were likely locations of the coins stolen during The Money Vault burglary, and the record unequivocally indicates that the arrest was not delayed or maneuvered to bring petitioner's residence within the scope of a permissible search.

The extent and intensity of the search were no greater than was justified by the officer's legitimate objective, to return the coins and coin paraphernalia stolen from The Money Vault to their rightful owner, and only what appeared to be property stolen from The Money Vault was seized. Moreover, a complete inventory of the items recovered was compiled in the presence of petitioner and a copy furnished to him.

Petitioner received the substance of the protection which a search warrant is designed to provide, although no such warrant was obtained. The information known to the arresting officer was sufficient to enable him to obtain a search warrant, although his failure to do so did not render the search unlawful. Moreover, the peculiar circumstances of the present case would have rendered it highly burdensome in terms of time and effort for the officer to execute a search warrant affidavit.

Petitioner would be in no better position today had the officer gone through the unreasonable effort required to obtain a search warrant in the present case.

The officer did nothing he could not properly have done under a search warrant, nor was justification of the search facilitated in any way by the fact that judicial review occurred subsequent to the search rather than as an antecedent thereto. To reverse the present judgment of conviction because the search and seizure, in all respects impeccable, was conducted without a search warrant would be to elevate form above substance and pointlessly, without advancing the cause of justice, punish a police department and a district attorney's office which like others throughout the nation[40] have relied justifiably for years on the opinions of this Court authorizing searches of the type that took place here.

The reasonableness of the present search is compellingly demonstrated by assessing it in light of the standard enunciated in one of this Court's most recent major opinions in the area of search and seizure, a standard which has been an underlying concept of the law of search and seizure since the late seventeenth century:[41]

> ". . . it is necessary 'first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected

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[40]". . . Search and seizure incident to lawful arrest is a practice of ancient origin and has long been an integral part of the law-enforcement procedures of the United States and of the individual states." (Footnotes omitted.) *Harris v. United States,* 331 U.S. 145, 150-51 (1947). *See* cases collected in 82 A.L.R. 786 *et seq.,* 74 A.L.R. 1394 *et seq.,* 51 A.L.R. 434 *et seq.,* 32 A.L.R. 697 *et seq.,* and in the A.L.R. Blue Book of Supplemental Decisions to these annotations. *See also Abel v. United States,* 362 U.S. 217, 235-36 (1960).

[41]N. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 34 (1937).

interests of the private citizen,' for there is 'no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails.' Camara v. Municipal Court, 387 U.S. 523, 534-535, 536-537 (1967). . . ." *Terry v. Ohio,* 392 U.S. 1, 21 (1968).

See also Elkins v. United States, 364 U.S. 206, 222 (1960);

Carroll v. United States, 267 U.S. 132, 149 (1925).

It should not be presumed that law enforcement officers will conduct unlawful searches in the absence of a rule making search warrants mandatory in all cases.[42] "[W]e should not permit our knowledge that abuses sometimes occur to give sinister coloration to procedures which are basically reasonable." *Harris v. United States,* 331 U.S. 145, 155 (1947). In any event experience has shown that the most effective deterrent against unreasonable search and seizure is the exclusionary rule. Moreover, there are factors that increasingly induce officers to obtain warrants when it is not unreasonably burdensome for them to do so. The rights

[42] *Cf. Beauharnais v. Illinois,* 343 U.S. 250, 263 (1952), wherein it was held: ". . . Every power may be abused, but the possibility of abuse is a poor reason for denying Illinois the power to adopt measures against criminal libels sanctioned by centuries of Anglo-American law." Clearly, ". . . no method for conviction of the wrongdoer has been devised that does not hold some danger to the bystander. . . ." Jackson *et al., Criminal Justice: The Vital Problem of the Future,* 39 A.B.A.J. 743 (1953). Any system that could be devised to preclude *all possibility* of abuse probably would completely eliminate most effective law enforcement techniques.

guaranteed by the Fourth Amendment are adequately protected so long as

> ". . . it is assured that *at some point* the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. . . ." (Emphasis added).
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> *Terry v. Ohio,* 392 U.S. 1, 21 (1968).

The question before this Court is really whether the burden on the average citizen, in terms of the likelihood of infringement upon his Fourth Amendment rights by the conduct of searches incident to lawful arrest instead of by search warrant, outweighs the benefit to him of the practice of search incident to arrest in terms of what he reasonably expects in the way of effective protection from lawlessness. The question thus is one of reasonable accommodation of the interests of society and the individual. Respondent submits that the State's interest in protecting its citizens from crime by means which are not unreasonably burdensome, as would be the obtaining of a search warrant in all cases where possible and under the circumstances of the present case, outweighed whatever slight addition there might have been to the legitimate invasion of petitioner's privacy from the fact that the lawful search was conducted incident to a concededly valid arrest instead of pursuant to a search warrant. *Trupiano v. United States,* 334 U.S. 699, 714, 716 (1948) (dissenting opinion of Chief Justice Vinson.)

The following observations seem appropriate to the present case, particularly in light of the fact that the matter here on review before the Court is a *State* conviction involving California's development of workable rules of arrest and search and seizure under our federal system of government:

> ". . . [T]his seems . . . a rather inopportune time to create a single rule more than the Constitution plainly requires to block conviction of guilty persons by keeping out probably the most reliable kind of evidence that can be offered."
>
> *Mancusi v. DeForte,* 392 U.S. 364, 373 (1968) (dissenting opinion of Mr. Justice Black, concurred in by Mr. Justice Stewart).

> ". . . To insist upon the use of a search warrant in situations *where the issuance of such a warrant can contribute nothing to the preservation of the rights which the Fourth Amendment was intended to protect,* serves only to open an avenue of escape for those guilty of crime and to menace the effective operation of government which is an essential precondition to the existence of all civil liberties." (Emphasis added.)
>
> *Trupiano v. United States,* 334 U.S. 699, 714-15 (1948) (dissenting opinion of Chief Justice Vinson, concurred in by Mr. Justice Black and Justices Reed and Burton).

For the foregoing reasons respondent State of California urges that the judgment of the California Supreme Court upholding petitioner's conviction of two counts of burglary be affirmed as to both counts.

Respectfully submitted,

THOMAS C. LYNCH,
Attorney General of the State of California,

WILLIAM E. JAMES,
Assistant Attorney General of the State of California,

RONALD M. GEORGE,
Deputy Attorney General of the State of California,

Attorneys for Respondent.

APPENDIX A*

The Warrants and Complaints for the Two Arrests

*The two warrants of arrest and the complaints, which were the sole basis upon which the respective warrants were issued, were received as defense exhibits at the trial but were omitted from the record on appeal as originally constituted. (R. 386-87.) Pursuant to counsel's stipulation (which has not been made a part of the record before this Court) certified copies of the complaints and warrants were ordered included in the record on appeal in the State proceedings. The complaints, with the formal parts omitted, are also set forth in the opinion of the Court of Appeal unofficially reported at 254 A.C.A. 13, 15-16 (nn.1, 2) (1967) [61 Cal. Rptr. 714, 715-16] (R. 390-92.)

IN THE MUNICIPAL COURT OF SANTA ANA-ORANGE JUDICIAL DISTRICT, COUNTY OF ORANGE, STATE OF CALIFORNIA

Complaint—Criminal

P.C. Sections 806-1426.

The People of the State of California, Plaintiff, vs. Ted Steven Chimel, Defendant. No. 91401.

Filed Municipal Court Santa Ana Orange Judicial District Sep 13 1965 R. D. Park Clerk.

Personally appeared before me this 13th day of September, 1965 T. DEL COMA who, being first duly sworn deposes and says:

That on or about the 14th day of August, 1965, at and within ~~Judicial District,~~ Orange County, California, the crime of Felony, to-wit: Violation of Section 459 of the Penal Code was committed by Ted Steven Chimel who at the time and place last aforesaid, did then and there willfully, and unlawfully, feloniously and burglariously enter a building known as The Money Vault, located at 153 North Glassell Street, Orange, in said County and State, with intent to commit theft.

I HEREBY CERTIFY that the foregoing instrument is a correct copy of the original on file in this office.

ATTEST my hand this Oct 27, 1966 19.....

R. D. PARK

Clerk of the Municipal Court, Santa Ana-Orange Judicial District County of Orange, State of California.

By Glenda Barnwell/s, Deputy

All of which is contrary to the form, force and effect of the Statute in such cases made and provided and against the peace and dignity of the people of the State of California.

Wherefore, said complainant prays that a warrant may be issued for the arrest of the said Ted Steven Chimel and that he be dealt with according to law.

Subscribed and sworn to before me, this 13th day of September, 1965.

REL:ecr

Kenneth Williams, District Attorney of Orange County, State of California.

By: Deputy.

T. Del Coma/s

Judge

R. D. PARK
Municipal
Clerk of the Santa Ana-Orange Court
Judicial District, County of Orange, State of California

By Emily Rawson/s Deputy

Orange Police Dept.

IN THE MUNICIPAL COURT OF SANTA ANA—ORANGE JUDICIAL DISTRICT, COUNTY OF ORANGE, STATE OF CALIFORNIA

610 North Broadway Street, Santa Ana.

The People of the State of California, Plaintiff, vs. Ted Steven Chimel Defendant(s). Case No. 91401.

Filed Municipal Court, Santa Ana-Orange Judicial District, Sept. 15, 1965 R. D. PARK, Clerk By ..... Deputy.

WARRANT OF ARREST-FELONY

The People of the State of California, to any peace officer of this State:

Complaint on oath having this day been laid before me that the crime of felony, to-wit:

[Defendant informed of right to Court appearance per P.C. 821-822 Date 9-13-65, Time 5:55 P.M. By: T. Del Coma/s, arresting officer]

Violation of Section 459 P.C. has been committed and accusing defendant TED STEVEN CHIMEL thereof, you are therefore commanded forthwith to arrest the above-named defendant and bring said defendant before me at the above-entitled court or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

The defendant is to be admitted to bail in the sum of	$10,000.00
Issued at the above-named judicial district Penalty Assessment	$ 1,000.00
Total for Release	[$11,000.00]

Dated Sept. 13, 1965 at 10:39 AM.

DAVID D. FRENCH/s
Judge of the above-entitled Court.

(SEAL) P.C. 813, 817, 821, 824.

RETURN OF PEACE OFFICER

I hereby certify that I received the above warrant and that I served the same by arresting the above-named defendant on September 13, 1965 and

(Applicable item checked)

☐ Bringing said defendant before a magistrate of the ..... Court of ..... Judicial District, on ..... in the County of .....

☒ booking said defendant at the Orange County Jail, on 9-13-65 in the County of Orange.

H. Richardson
Name and Title of Peace Officer
By T. Del Coma/s—Det. #3
Officer or Deputy

Dated.....

PC. 821, 822, 848.

APPEARANCE DATE ON ADMISSION TO BAIL

Bail and penalty assessment posted and defendant notified to appear in the above-entitled Court on ..... at ....M.

Dated .....

Officer in Charge of Jail
P.C. 1269, 1295

CERTIFICATE OF A MAGISTRATE OF ANOTHER COURT

I hereby certify that the defendant named in the above warrant was this day brought before me and I ordered that the said defendant be admitted to bail in the sum of $..... including penalty assessment.

(Applicable item checked)

Bail Given ☐ Bail and penalty assessment having been given by ..... whose address is..... the said defendant was ordered to appear in the above-entitled court on ..... at .....M., and said defendant is hereby ordered released.

Bail not Given ☐ Bail not having been given, the said defendant is hereby remanded to the custody of the ....., ... for appearance in the above-entitled court on ..... at .....M.

Dated ....., at ....., California.

Signature of Magistrate
Title and Court
P.C. 821, 1269, 1269a, 1269b

F 2015-2204

WARRANT OF ARREST-FELONY

IN THE MUNICIPAL COURT OF SANTA ANA-ORANGE JUDICIAL DISTRICT, COUNTY OF ORANGE, STATE OF CALIFORNIA

Complaint—Criminal

P.C. Sections 806-1426.

The People of the State of California, Plaintiff, vs. Ted Steven Chimel, Defendant. No. 91516.

Filed Municipal Court, Santa Ana Orange Judicial District, Sep 16 1965 R. D. Park Clerk.

Personally appeared before me this 16th day of September, 1965 F. D. GALLMEISTER who, being first duly sworn, deposes and says:

COUNT I: That on or about the 2nd day of February, 1965, at and within ~~Judicial District,~~ Orange County, California, the crime of Felony, to-wit: Violation of Section 459 of the Penal Code was committed by Ted Steven Chimel who at the time and place last aforesaid, did then and there wilfully, ~~and~~ unlawfully, feloniously and burglariously enter a house in the possession of and under the control of Vito L. Pulati, located at 1303 South Flower Street, Santa Ana, in said County and State, with intent to commit theft.

COUNT II: That on or about the 2nd day of February, 1965, at and within Orange County, California, the crime of Felony, to-wit: Violation of Section 496 of the Penal Code was committed by TED STEVEN CHIMEL who at the time and place last aforesaid, did then and there willfully, unlawfully and feloniously buy and receive certain property, to-wit: coins, which had been stolen, knowing the same to have been stolen

and did conceal and withhold such property from the owner.

I HEREBY CERTIFY that the foregoing instrument is a correct copy of the original on file in this office.

ATTEST my hand this Oct. 27, 1966 19.....

R. D. PARK
Clerk of the Municipal Court, Santa Ana-Orange Judicial District
County of Orange, State of California
By Glenda Barnwell/s, Deputy

All of which is contrary to the form, force and effect of the Statute in such cases made and provided and against the peace and dignity of the people of the State of California.

Wherefore, said complainant prays that a warrant may be issued for the arrest of the said Ted Steven Chimel and that he be dealt with according to law.

Subscribed and sworn to before me, this 16th day of September, 1965.

JPD/REL/ar

Kenneth Williams, District Attorney of Orange County, State of California.

By: Deputy.
F. D. Gallmeister/s

.....

Judge
R. D. PARK
Municipal Clerk of the Santa Ana-Orange Court Judicial District, County of Orange, State of California
By Emily Rawson/s Deputy

IN THE MUNICIPAL COURT OF SANTA ANA-ORANGE JUDICIAL DISTRICT, COUNTY OF ORANGE, STATE OF CALIFORNIA

610 North Broadway Street, Santa Ana.

The People of the State of California, Plaintiff, vs. Ted Steven Chimel, Defendant(s). Case No. 91516.

Filed Municipal Court Santa Ana-Orange Judicial District, Sept. 17, 1965. R. D. PARK, Clerk By .....
.....Deputy.

WARRANT OF ARREST-FELONY

The People of the State of California, to any peace officer of this State: Complaint on oath having this day been laid before me that the crime of felony, to-wit: Violation of Section 459 P.C. - Ct. I, Violation of Section 496 P.C. - Ct. II, has been committed, and accusing defendant TED STEVEN CHIMEL thereof, you are therefore commanded forthwith to arrest the above-named defendant and bring said defendant before me at the above-entitled court or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

The defendant is to be admitted to bail in the sum of $10,000.00

Issued at the above-named judicial district

Penalty Assessment $ 1,000.00

Total for Release [$11,000.00]

Dated Sept. 16, 1965 at 10:30 A.M.

DAVID D. FRENCH/s
Judge of the above-entitled Court
P.C. 813, 817, 821, 824

(SEAL)

RETURN OF PEACE OFFICER

I hereby certify that I received the above warrant and that I served the same by arresting the above-named defendant on Sept. 16, 1965 and

(Applicable item checked)

☐ bringing said defendant before a magistrate of the ..... Court of ..... Judicial District, on ..... in the County of .....

☒ booking said defendant at the Orange County Jail, on Sept. 16, 1965 in the County of Orange.

Dated Sept. 16, 1965.

R. L. Merino/s
Name and Title of Peace Officer
By Chief Edward J. Allen, Santa Ana
Officer or Deputy

P.C. 821, 822, 848

APPEARANCE DATE ON ADMISSION TO BAIL

Bail and penalty assessment posted and defendant notified to appear in the above-entitled Court on ..... at ..... M.

Dated .....

.....
Officer in Charge of Jail

P. C. 1269, 1295

CERTIFICATE OF A MAGISTRATE OF ANOTHER COURT

I hereby certify that the defendant named in the above warrant was this day brought before me and I ordered that the said defendant be admitted to bail in the sum of $..... including penalty assessment.

(Applicable item checked)

Bail Given ☐ Bail and penalty assessment having been given by ....., whose address is ...., the said defendant was ordered to appear in the above-entitled court on .... at .....M., and said defendant is hereby ordered released.

Bail not Given ☐ Bail not having been given, the said defendant is hereby remanded to the custody of the ..... for appearance in the above-entitled court on ..... at ....M.

Dated ..... at ....., California.

F 2015-2204

.....
Signature of Magistrate

.....
Title and Court

P.C. 821, 824, 1269, 1269a, 1269b

WARRANT OF ARREST-FELONY

APPENDIX B*

Inventory of Property Seized and of Other Trial Exhibits

*In lieu of having transmitted to this Court the bulky exhibits comprising the coins which were received in evidence at the trial, as petitioner had them transmitted to the California Court of Appeal when the case was before that court, respondent with the express concurrence of petitioner's conusel has appended hereto an inventory of these coins and of other exhibits which were received in evidence at the trial.

This inventory is part of the Superior Court file in the present case. It lists all the items retrieved from petitioner's residence during the September 13, 1965, search (People's Exhibits 11, 12, and 13; R. 226, 228, 274, 284-85), including those items identified as from the Pulati burglary. (People's Exhibit 11-A [part of Exhibit 11]; R. 226-27, 285.) The inventory also lists all the other exhibits received in evidence at the trial except for the photographs and drawings (*i.e.* People's Exhibit 7 [the 1877-S Trade Dollar from The Money Vault burglary sold by petitioner to Mr. Shapiro], R. 110; Defendant's Exhibits A and B [an 1879 Trade Dollar and an empty coin folder, respectively], R. 308-09, 388-89.)

Page 1 of 7 pages

IN THE MATTER OF PEOPLE VS CHIMEL
CASE NO. C-16098

(Inventory of Peoples Exhibit No. 11)

1 Lincoln Head Cent Coin Folder containing: 51 Lincoln Head pennies

1 Washington Quarter Folder containing: 61 Washington quarters

1 Coin Wallet containing: 14 Lincoln Head pennies, 1 Peace Type Silver Dollar, 3 large cents

1 Complete Set Jefferson Nickles BR Uncirculated, 1938-1964; 71 coins

1 Envelope #1 containing:
1 Indian Head penny
7 Lincoln Head pennies
3 Indian Head or Buffalo type 5¢ pieces
8 Winged Head Liberty or "Mercury" type dimes
10 Roosevelt type dimes
10 20¢ pieces
4 Franklin-Liberty Bell type half dollars

1 Tube No. 1 containing: 50 Lincoln Head pennies

1 Tube No. 2 containing: 25 Lincoln Head pennies

1 Tube No. 3 containing: 50 Lincoln Head pennies

1 Tube No. 4 containing: 1 Indian Head penny and 1 Flying Eagle penny

1 Tube No. 5 containing: 47 Liberty Head type 5¢ pieces

1 Tube No. 6 containing: 41 Liberty Head type 5¢ pieces and 6 Shield type 5¢ pieces

1 Tube No. 7 containing: 27 Jefferson type 5¢ pieces

1 Tube No. 8 containing: 22 Jefferson type 5¢ pieces

1 Tube No. 9 containing: 21 Jefferson type 5¢ pieces

1 Tube No. 10 containing: 13 Jefferson type 5¢ pieces
1 Tube No. 11 containing: 19 Jefferson type 5¢ pieces
1 Tube No. 12 containing: 35 Indian Head or buffalo type 5¢ pieces
1 Tube No. 13 containing: 42 Indian Head or buffalo type 5¢ pieces.

-1-

Page 2 of 7 pages

IN THE MATTER OF PEOPLE VS CHIMEL

Continued—Inventory of Peoples Exhibit No. 11

1 Tube No. 14 containing: 34 Indian Head or buffalo type 5¢ pieces
1 Tube No. 15 containing: 42 Indian Head or buffalo type 5¢ pieces
1 Tube No. 16 containing: 34 Indian Head or buffalo type 5¢ pieces
1 Tube No. 17 containing: 42 Indian Head or buffalo type 5¢ pieces
1 Tube No. 18 containing: 37 Indian Head or buffalo type 5¢ pieces
1 Tube No. 19 containing: 5 Jefferson type and 3 Liberty Head type 5¢ pieces
1 Tube No. 20 containing: 43 Indian Head or buffalo type 5¢ pieces
1 Tube No. 21 containing: 43 Indian Head or buffalo type 5¢ pieces
1 Tube No. 22 containing: 42 Indian Head or buffalo type 5¢ pieces
1 Tube No. 23 containing: 32 Indian Head and 2 Liberty Head type 5¢ pieces

1 Tube No. 24 containing: 20 Indian Head 5¢ pieces
1 Tube No. 25 containing: 20 Indian Head 5¢ pieces
1 Tube No. 26 containing: 43 Roosevelt type dimes
1 Tube No. 27 containing: 7 Roosevelt type dimes
1 Box No. 1 containing: 17 Foreign Coins
2 Lincoln Head pennies

Miscellaneous—Package of empty coin folders
2 Empty coin tubes
6 packages razor blades

IN THE MATTER OF PEOPLE VS CHIMEL

Case No. C-16098

(Inventory of Peoples Exhibit No. 11-A)

1 Coin Tube containing: 25 Lincoln Head pennies
1 German 5 Marks coin
1 French 5 Francs coin
1 Panamanian Commemorative coin
1 Republic of Guatemala peso coin
2 Sherbrooke coin exchange of Canada tokens
1 Souvenir Gold coin from Redding, Calif.
2 Golden Gate International Exposition coins
1 Alaskan brotherhood coin
1 Washington state diamond jubilee coin
1 One dollar Alaska trade coin
1 Century 21 Exposition coin
6 Century 21 Exposition trade dollars
1 Colorado and Wyoming numismatic Assn. coin
1 United Nations Organization coin
3 Hawaii trade dollars

1 Old Ironsides coin
1 Pony Express Centenniel coin
1 Queen Elizabeth II Coronation coin
1 Victory Liberty Loan coin
1 Florida State Capital coin
1 Canadian Friendship token
1 Dakota territory centenniel 50¢ trade coin
1 Allied victory over the axis coin

IN THE MATTER OF PEOPLE VS CHIMEL

Continued—Inventory of Peoples Exhibit No. 11-A

1 Gold Nugget celebration 50¢ trade coin
1 300th Anniversary Landing of the Swedes in America coin
1 Gustavus Linden Mueller coin
1 Broas Bros. pie bakers coin
1 Elect Vance police Judge coin
6 Zero cents coins
1 Northern Calif. numismatic pin
1 Portion of envelope bearing name and address of Ted Chimel

IN THE MATTER OF PEOPLE VS CHIMEL

CASE NO. C-16098

(Inventory of Defendants Exhibit A)

1 Silver Dollar (1879)

(Inventory of Defendants Exhibit B)

1 Empty Coin folder

(Inventory of Peoples Exhibit 12)

Box No. 1

88 Lincoln Head pennies

Box No. 2

14 Indian Head cents
3 Flying Eagle cents
26 Lincoln Head cents
1 2¢ piece
10 Jefferson type nickels
4 Barber or Liberty Head type dimes
10 Winged Head Liberty or Mercury type dimes
13 Roosevelt type dimes

Box No. 3

7 Coin Tubes containing: 180 Winged Head Liberty or Mercury type dimes
1 Coin Tube containing: 31 Roosevelt type dimes
Empty coin folders

Box No. 4

1 Stone Mountain Memoriam Comm. coin
1 Booker T. Washington Comm. coin
1 Washington-Carver Comm. coin
3 Franklin-Liberty Bell type half dollars
5 Liberty Head or Morgan type silver dollars
17 Peace type silver dollars

IN THE MATTER OF PEOPLE VS. CHIMEL

CASE NO. C-16098

Continued - Inventory of Peoples Exhibit 12

Box No. 5

2 Indian Head pennies
32 Lincoln Head pennies
1 2¢ piece
2 Liberty Head nickels
2 Jefferson type nickels
1 Kennedy half dollar
1 Canadian 5¢ piece
1 Newfoundland 1¢ piece
1 California State Numismatic Assoc. coin

Box No. 6

28 Indian Head or Buffalo type nickels
4 Jefferson type nickels
44 Winged Head Liberty or Mercury type dimes
4 Roosevelt type dimes
1 Coin Folder containing: 83 Washington quarters

Inventory of Peoples Exhibit 12-A

3 Liberty Head nickels
1 Roosevelt type dime
1 Washington quarter
1 California State Numismatic Assoc. coin

Inventory of Peoples Exhibit 12-B

1 Coin Folder containing:
1 Indian Head or Buffalo type nickel
1 Jefferson type nickel

IN THE MATTER OF PEOPLE VS CHIMEL

CASE NO. C-16098

Continued—Inventory of Peoples Exhibit 12-B

4 Winged Head Liberty or Mercury type dimes
1 20¢ piece
2 Franklin half dollars
3 Peace type silver dollars

Inventory of Peoples Exhibit No. 13

1 Coin box containing: 1 Empty coin folder

Exhibit No. 7

1 Christian Gobrecht silver dollar

THIS INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

ATTEST: Dec 30 1968

W. E. ST JOHN
County Clerk and Clerk of the
Superior Court of the State of California in and for
the County of Orange.

By [illegible signature] DEPUTY

(SEAL)